(21,561.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 177.

JULIAN MUNSURI, PLAINTIFF IN ERROR,

vs.

J. H. FRICKER, TRUSTEE.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

INDEX.

	Original.	Print
Caption	1	1
Motion for dissolution of orders made by referee in bankruptcy affecting the personal rights or private property of Julian Munsuri.	2	1
Affidavit of Jose Trueba	7	4
Opinion of Judge Rodey, attached as an exhibit to the motion to vacate order for filing schedule in case No. 22, bankruptcy	15	8
Deed to extend the duration of a contract of partnership, December 30, 1901 (No. 126), attached to motion and affidavit as an exhibit.	24	13
Petition in bankruptcy	31	17
Order of reference	33	18
List of debts proved	34	19
Petition for restraining order	35	19
Restraining order	37	20
Petition and order to file schedules	38	21
Order of referee to the marshal, October 30, 1907	39	21
Order of referee, June 27, 1907	40	22
Petition to review order	42	23
Certificate by referee to judge	44	23
Motion that Julian Munsuri be declared a general partner, &c.	49	26
Order declaring Munsuri general partner, &c	50	27
Opinion reversing referee's decision, &c	51	27
Notice of motion, February 27, 1908	55	30

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 10, 1911.

	Original.	Print
Motion to dismiss for want of jurisdiction, February 27, 1908	56	30
Supplemental motion on ground of settlement	58	31
Exhibit A—List of debts, &c.	66	36
Power of attorney No. 303	67	37
Opinion of Judge Rodey, July 14, 1908	69	38
Petition of Julian Munsuri, July 29, 1908	73	40
Petition of Sweetzer, Pembroke & Co	83	46
Marshal's return of service of petition	87	48
Amended affidavit to petition in bankruptcy	88	49
Denial of Jose Trueba y Munsuri	91	50
Denial of Julian Munsuri	92	51
Motion of Bernheimer & Walter, Garner & Co., and Heller & Long to be admitted as petitioning creditors	93	52
Motion of Tefft, Weller & Co. to be substituted as petitioning creditors	97	54
Motion to set aside service of process and dismiss	99	55
Order of Judge Holt, December 3, 1903	101	56
Order of Judge Holt, January 18, 1904	102	56
Notice of motion to dismiss	103	57
Opposition to motion to dismiss	104	57
Petition of Heller, Long & Co	105	58
Opinion of Judge Holt, February 20, 1904	106	58
Affidavit of Julian Munsuri	108	59
Withdrawal of opposition of Heller, Long & Co. *et al*	109	60
Consent for dismissal by Miguel Arsuaga	110	61
Dismissal of proceedings by Sweetzer, Pembroke & Co. *et al*	111	61
Order of dismissal, March 28, 1904	112	61
Receipts and accounts	113	62
Report and finding of referee on motion for disallowance of claims	126	71
Petition for review	140	80
Memorandum by the court placed in the files giving reasons for overruling the referee's approval of certain claims	142	82
Petition for writ of review	145	84
Assignments of error	148	86
Bond on petition for review	151	88
Testimony of Jose Truebas, October 16, 1906	153	89
Jose Truebas, January 2, 1907	158	92
Jose Truebas, May 11, 1907	170	100
Jose Truebas, May 13, 1907	191	113
Lloyd Lyon	212	126
Henry Robert Wm. Korber	221	132
Jose Maria Pena	223	132
Joaquin Matienzo	225	134
Manuel Alonso	226	135
Manuel Ranero	228	136
Rafael Fernandez	228	136
Wenceslao Bosch	229	136
Clerk's certificate	240	143
Præcipe for record	241	144
Citation and service	243	145
Judge's certificate to record	244	146

1 At the District Court of the United States for Porto Rico held at San Juan in said District before the Judge of said District Court and the Referee in Bankruptcy of said Court at different hearings from September 26, 1906 until the 9th day of February, 1909, among the proceedings had was the rendition of the judgments of said Court, sitting as a Court of Bankruptcy on the 25th day of October, 1907, the 14th day of July, 1908, and the 9th day of February, 1909, in which he passed upon the question of jurisdiction and of partnership relation of Julian Munsuri to the firm of Sucesores de José Hernaiz, in the following entitled cause, to wit:

No. 22.

In re SUCESORES DE JOSÉ HERNAIZ. In Bankruptcy.

2 In the United States District Court for Porto Rico.

Before the Referee in Bankruptcy.

In the Matter of SUCCESSORS OF JOSÉ HERNAIZ & COMPANY. In Liquidation.

Motion.

Now at this time comes Julian Munsuri, by his attorneys, Sweet, Rossy & Campillo, appearing for the purposes in this motion set forth and for no other purpose, and by this special appearance moves the referee in said matter to dissolve the writ of attachment heretofore issued in said matter by order of said referee, and also to dissolve an injunction heretofore issued by said referee, the said attachment having been levied upon the rents and moneys of said Julian Munsuri and an injunction annotated in the office of the registrar of property; and the said injunction being a restraining order prohibiting the said Munsuri from transferring any of his property in Porto Rico whatsoever.

This motion is based upon the following facts and circumstances, to-wit:

I.

The said Munsuri was a silent partner in the firm of the successors of José Hernaiz & Company.

II.

In the year 1903 the said firm became insolvent and a liquidation of its affairs was commenced, all of which appears in the affidavit of José Trueba, which affidavit is hereto attached and
3 made a part hereof, the same as if fully set forth at this place.

III.

The said Julian Munsuri left Porto Rico for Spain in the year 1904, and the said José Trueba continued the business of liquidating said firm as the general or managing partner thereof; the said Julian Munsuri not having returned to Porto Rico since his departure, as before stated.

IV.

In October, 1906, the said José Trueba acting within the scope of his authority as the general or managing partner of said firm, filed his petition in bankruptcy in the United States District Court for Porto Rico.

V.

And various proceedings were had before said referee in bankruptcy, when on the 14th day of May, 1907, William H. Hawkins, Esq., a member of the bar of said court and representing different creditors of the bankrupt firm, asked the court for an order requiring said Julian Munsuri, or his agent, to file schedules of the private property of said Munsuri; and thereupon, on the same date, the referee issued the order as requested.

VI.

And on the same day the said Hawkins petitioned for a further order asking that a restraining order be issued enjoining said Munsuri from disposing of or in any way transferring or encumbering any of his property in Porto Rico; and also requiring any of his agents to deposit with said referee any and all moneys received on account of rents or otherwise belonging to said Munsuri pending the action of the referee or the final determination by the court in the premises.

VII.

The rents of said Munsuri have therefore been sequestrated
4 and the injunction issued, all as if the said referee had full and complete jurisdiction over the person and property of said Munsuri.

VIII.

The attorneys for said Munsuri submit the facts as they appear from the record, all of which are hereto attached, in support of the motion which they now make and which in addition to the fact that no record before this referee justifies the proceeding had, even if said Munsuri were within the jurisdiction of the court; but submit, further, that under the decision of the said District Court of Porto Rico in the case of Luis Vallecille et al. vs. Bertran Brothers the said referee has in no form or for any purpose acquired jurisdiction over the said Munsuri, or any of his personal property.

IX.

The fact is further submitted that the hearings and the affidavit attached show that said Munsuri was a silent partner in said firm, and that as such he was liable to the creditors of the firm only to the extent of his interest in the same; and in this connection the attorneys for said Munsuri state that the capital of said firm amounted to 103,000 pesos, of which amount the said Munsuri contributed 85,000 pesos and the said José Trueba contributed 18,000 pesos.

X.

As to this capital each of said partners have lost all that was invested and the business houses, of which there were the main house in the city of San Juan, and branches at Arecibo and Utuada, have long since been closed.

XI.

As a part of this motion the attorneys for said Munsuri submit the affidavit of said José Trueba with its exhibits; also a copy of the evidence taken before the referee, a copy of the evidence of José Trueba taken before the referee; also the petition of said Hawkins and the orders of said referee, and also a copy of the opinion of the Honorable Judge of the said United States District Court in the case referred to, in which the views of said court upon its jurisdiction over persons not served within the district are fully set forth.

XII.

Attorneys for said Munsuri also submit, as appears in said affidavit, that the principal property of said Munsuri consists of three houses in the City of San Juan, which are now held by the American Colonial Bank of said city under a mortgage to secure the balance of $22,000., or about that sum, upon an original sum of $40,000. which said Munsuri borrowed from said Bank and loaned said firm; and counsel for said Munsuri are advised and believe that the attempt to sequestrate the rents and otherwise prevent the said Munsuri from paying his obligation to said Bank is about to result in his total loss of said property without at all benefiting said creditors; and that said proceeding is not only had without the jurisdiction of said referee but without any showing whatever of fraud on the part of said Munsuri, or any effort on his part to in any way defraud any of his creditors, or the creditors of said firm, in bankruptcy.

Wherefore, the attorneys for said Julian Munsuri appear specially as aforesaid and move the dissolution of any and all orders made by said referee in bankruptcy affecting the personal rights or private property of said Julian Munsuri.

SWEET, ROSSY & CAMPILLO,
Counsel for Julian Munsuri.

6 *Affidavit.*

UNITED STATES OF AMERICA,
District of Porto Rico, ss:

Willis Sweet, being first duly sworn, says: That he is one of the attorneys for said Munsuri in the above entitled matter; that he has read the foregoing motion and knows the contents thereof, and that he believes the same to be true; that as one of said attorneys he believes he is the only person within the jurisdiction of said court authorized to make this affidavit or appear in behalf of said Julian Munsuri personally in said proceeding.

WILLIS SWEET.

Subscribed and sworn to before me this 15 day of June, 1907.
H. H. SCOVILLE, *Clerk.*

7 In the United States District Court for Porto Rico.

In Bankruptcy.

In the Matter of SUCCESSORS OF JOSÉ HERNAIZ & COMPANY. In Liquidation.

Affidavit of Mr. José Trueba in the Matter of the Attachment of the Private Property of Julian Munsuri, and the Sequestration of His Rents and Profits by the Referee in the Above Matter.

The said Julian Munsuri, by his Attorneys, Sweet, Rossy and Campillo, as set forth in the motion attached to this affidavit, appearing specially for the purposes therein set forth, and for those purposes only, submit the following affidavit:

UNITED STATES OF AMERICA,
District of Porto Rico, ss:

In the year 1886, the firm of the Successors of José Hernaiz & Company was organized, for the purpose of engaging in the mercantile business in San Juan, Porto Rico, at the same time having a branch store in Arecibo. At that time, the firm consisted of Antonino Arand, Julian Munsuri, and José Hernaiz, said Julian Munsuri and Antonino Arand being the managing partners of said firm, and José Hernaiz being a silent partner thereof. Affiant was at that time a clerk in the employ of said firm. Said firm continued in business for a period of about three years, when it was re-
8 organized under the firm name and style of Successors of José Hernaiz & Company. Affiant was at that time but a clerk in the employ of said firm, and cannot state all of the facts, details or circumstances which led to the reorganization thereof, but as nearly as he can state them, the dissolution of the old firm and the

reorganization of the new one, resulted from the withdrawal of Antonino Arand. The said reorganized firm of Hernaiz & Company continued in the said business until the year 1891, when it was reorganized under the firm name and style of the Successors of José Hernaiz. The membership of this firm was Julian Munsuri and this affiant, José Trueba. This was a general partnership, both of the members thereof sharing equally in the management of its business. The firm continued under said organization until the year 1895, when it was reorganized under the firm name and style of Successors of José Hernaiz. The new firm was composed of Julian Munsuri, this affiant and Isidoro Llona, said Julian Munsuri retiring and becoming a silent partner thereof, and this affiant and the said Llona becoming managing partners of said firm. This firm continued the business for a period of about two years, when it was dissolved by reason of the fact that Isidoro Llona retired from said firm; and the firm was again reorganized and the business continued under the name of the Successors of José Hernaiz, with this affiant as the only managing partner thereof, and Julian Munsuri as a silent partner. The said firm continued under this firm name and style, with renewals from time to time as the different specified terms of the partnership expired from 1899 until its suspension of payment in 1903, and the final bankruptcy of said firm in October 1906.

9 On August 10, 1897, after the withdrawal of said Isidoro Llona, the firm was immediately reorganized with affiant as the managing partner thereof and Julian Munsuri as a silent partner, as before stated. The capital of said firm as last above organized amounted to one hundred and three thousand pesos, Mexican, eighty-five thousand of which were represented by the silent partner, Julian Munsuri, and the remaining eighteen thousand being the representation in said firm of this affiant. The articles of partnership between said Julian Munsuri and this affiant are hereto attached, marked exhibit "A" and made a part of this affidavit, the same as if fully set forth at this place.

The said firm as last organized continued in business without interruption or serious drawback until the year 1898, when the change of sovereignty, carrying with it all of the incidents of war, naturally and practically suspended business, and brought to said firm its first serious complications. These complications arose from the following facts: The firm had established in addition to the houses at San Juan and Arecibo, and office and store at Utuado, and was doing a heavy credit business; so that when the war came and the conditions mentioned arose, it was practically impossible for said firm to collect its outstanding credits. Following closely upon this situation came the cyclon- of August, 1899, which further crippled the resources of said firm, the more so, because very many of its credits were based upon the coffee industry, and in addition to the destructions of coffee fincas by said hurricane, came the falling price of that product. These conditions made it impossible for this class of creditors to pay said firm, and in endeavoring to save itself, many more investments were

made by said firm in the way of attempting to sustain and to
10 recuperate the productive capacity of fincas which had fallen
into their hands in payment of these credits. These conditions substantially continued until 1903, the firm endeavoring to realize upon its credits, and thus enabling itself to meet the requirements of its creditors. Such effort was a failure, and in 1903, in pursuance of the laws of Porto Rico, said firm announced to its creditors the suspension of payments. As a part of the proceedings of said suspension of payments, said firm notified all of its creditors of said suspension, with the expectation that in accordance with the practice in such cases, said creditors would meet and determine what course should be adopted under the circumstances. Affiant further says that no creditor appeared in response to said notice, and that hence the firm drifted along, still attempting to collect its credits, but no improvement taking place, said firm availed itself of the bankruptcy laws of the United States and filed a petition in voluntary bankruptcy. Affiant further states that upon the suspension of payments he appointed José Urreola as the liquidator of the merchandise still in the possession of said firm, and that in 1904, Wenceslao Bosch was appointed liquidator of said firm.

Affiant further says that the relation of said Munsuri to said firm was that of a silent partner as herein before stated; and as such affiant is advised and believes that he was liable to the creditors of said firm in the full amount of the capital that he had invested in the business of said firm, to wit: The sum of eighty-five thousand pesos, Mexican, and affiant further says that the said articles of partnership between himself and said Munsuri, were in the form of a public document, and the said document was duly registered in the
office of the Commercial Registry of Porto Rico, whereby and
11 wherefrom all persons were duly notified of the relation borne by said Munsuri to said firm and his liability because thereof.

Affiant further says that in the year 1902, owing to the embarrassed condition of said firm as already stated, the said Munsuri loaned to said firm the sum of forty thousand dollars, currency of the United States, for the purpose of enabling said firm to meet its first accruing obligations, and with the hope that said loan might save the loss to said firm of its capital stock; and affiant further says that said money was applied to the payment of the debts of said firm for the purpose set forth. Affiant further says that for the reasons already stated, the suspension of payments followed in 1903, and that the said sum of money was not sufficient to accomplish the purpose for which the loan was made. That thereupon said Munsuri, still hoping to save the amount of his liability, to wit, eighty-five thousand pesos, Mexican, as well as the capital stock of the firm generally, negotiated certain compromises with the creditors of said firm, of which he personally paid the per cent agreed upon to the said creditors, and became the owner of said claims. In this manner, said Munsuri purchased nearly all of the claims against said firm, and paid individually therefor, said Mun-

suri thus hoping, as aforesaid, to save to himself something of the liability under which he was placed as a special partner of said firm.

Affiant further says that the said Munsuri was never a managing partner of said firm, and that as far as affiant knows, he did not act as such during said last named partnership. Affiant also states

12 that the forty thousand dollars loaned by said Munsuri to said firm was by said Munsuri borrowed individually of the American Colonial Bank of San Juan, and that of said loan said Munsuri still owes between twenty thousand and twenty-two thousand dollars, and that the private property of said Munsuri, property which the plaintiffs in this action seek to subject to attachment and sequestration, are and have for a long time been mortgaged to said bank as security for said money. Affiant says that the loan of said Munsuri to said firm, amounted to the sum of forty thousand dollars, but that ten thousand dollars is still due from said firm to said Munsuri on account of the said loan of forty thousand dollars, besides his interest in the credits of said firm which were last, as in this affidavit set forth.

Affiant further says that said Munsuri departed for Spain in the year 1904, and that he has since resided in that country; that affiant has been the attorney in fact for said Munsuri since his said departure for Spain and that because of this relation, he is reasonably familiar with his affairs, and affiant states that the collection referred to in the proceedings before the Referee arising from the rents of the private property of said Munsuri has been applied, first, to the payment of taxes and for repairs of said property, and also the payment of interest to the Colonial Bank on account of the large loan referred to, which is still carried by said bank.

Affiant further says that personally he lost his entire capital of eighteen thousand pesos, Mexican, originally made by him a part of the capital of said firm, together with all of the profits that had accrued from time to time thereto, besides his liability as the managing partner of said firm for lawful, existing claims. Affiant states

13 that he has never received from said firm any return whatever, either for the money invested or services rendered by him, except his necessary living expenses during said period, and that he is today employed upon a salary as the manager of a Sugar Factory at Morovis, in Porto Rico.

Affiant distinctly asserts that no frauds have been committed upon the creditors of said firm, either by himself or said Munsuri, or at all, and that the losses and misfortunes of said firm are in this affidavit truthfully related and all as set forth herein.

With reference to the purchase of goods by said Munsuri, affiant says that in about the year 1902, said Munsuri visited the United States on account of his health, and as a matter of time and economy, affiant sent by him to purchase certain goods for the firm, and that goods so purchased were charged to said firm, and the drafts of said firm issued in payment therefor. Affiant is not certain whether once upon a prior visit to the United States, the said Munsuri may not have done the same thing.

Affiant further says that upon the reorganization of said firm in 1897, notice of the same was sent to all persons or firms having business relations with the firm of affiant, and that each of the creditors now complaining of said firm received said notice, and that said notice fully set forth the fact that said Munsuri was a silent partner in said firm. A copy of the notice thus issued is hereto attached, marked exhibit "B" and made a part hereof. The notice in Spanish, hereto attached, is a correct copy of the notice issued to all creditors. As a further il-ustration of this point,
14 the notice of the reorganization in 1895, is also hereto attached, marked exhibit "C" and made a part hereof.

JOSÉ TRUEBA.

Subscribed and sworn to before me, this 25th day of May, 1907.

[NOTARY'S SEAL.] LUIS CAMPILLO,
Notary Public.

15 (*Opinion Attached as an Exhibit to the Motion to Vacate Order for Filing Schedules in Case No. 22, Bankruptcy.*)

In the United States District Court for Porto Rico.

No. 367.

BELEN ORTIZ ET AL., Plaintiffs,
vs.
EVARISTO ALCALÁ DEL OLMO ET AL., Defendants.

Opinion of the Court Sustaining a Plea to the Jurisdiction Because of Service by Publication in a Foreign Attachment.

The plaintiffs in this case allege that they are citizens of, and residents in Porto Rico, and that the defendants are subjects of the King of Spain and reside in that country. This suit is an action for damages in the sum of about $72,000, alleged to have occurred during certain foreclosure and receivership proceedings, while defendants were residents of Porto Rico, some years ago. The proceeding was commenced by the issuance of a summons in the ordinary form, and the contemporaneous issuance of a writ of attachment. The Marshal's return shows that he was unable to find the defendants in the distrrict, but that he attached their property under the writ, as per the directions of the plaintiffs, filed for that purpose.

Thereupon, the plaintiffs — for, and were allowed substituted process by publication. Hence it is what is known in law as a foreign attachment proceeding. Defendants, by counsel, demur, plead to the jurisdiction and move to dissolve the attachment.
16 The question is indeed a very important one. To decide it, the Court must pass upon the question as to whether this

Court has power to render any judgment against these nonresident defendants on such service, by which their property, attached at the time of the filing of the suit and the issuance of the writ, can be sold or subjected to the satisfaction of plaintiffs' claim. In other words, is there any jurisdiction in a district or circuit Court of the United States of a proceeding in rem where the defendant is not served with the process personally within the district?

It may be well to state that, in this district the lack of such jurisdiction in this Court will result in considerable inconvenience, because many Spaniards, often with plenty of property here, left for Spain just before, at, or shortly after the commencement of the Spanish-American war, and have ever since continued to reside there, in many instances, it is said, leaving ex delicto, and some times, ex contractu obligations behind them. Under the peculiar mixture of civil law and code procedure of the local Insular Courts, counsel contend that their clients have no adequate remedy there.

This Court, of course, has a unique status. Without being a Court of the United States in the sense of Art. 3, Sec. 1, of the Constitution (13 Wall., 434) it is called, "The District Court of the United States for Porto Rico," and has, in addition to the ordinary jurisdiction of a District Court of the United States, jurisdiction also of a Circuit Court of the United States (Sec. 34 Act of Congress, April 12, 1900, 31 Stats., 77), and in addition, is given jurisdiction of all civil cases, "where the parties or either of them * * * are subjects of a foreign State or States * * *," 31 Stats., 953.

17 Assuming then that the Court has, not only as complete, but even ampler jurisdiction than a district or circuit court of the United States, can it entertain this sort of a case?

Practically every State and Territory has granted the power here contended for, by their own laws, to their Courts, of highest original jurisdiction, but it is contended that no such power has even been vested in Courts of the United States, by Congress.

Counsel for the respective parties have made arguments and filed briefs before the Court, that show commendable zeal in reasoning out the law, and tracing the different cases in which the subject has been discussed.

Whether the Court has the jurisdiction contended for or not, depends upon the construction to be given to the eleventh section of the Judiciary Act of 1789, and to all amendments of the same, and other legislation on the subject, especially the process act of 1872, Sect. 915 Revised Statutes.

It is doubtful if the Supreme Court of the United States has ever squarely passed upon the subject, under the law as it is at the present time. The leading case, and one upon which all of the authorities cited, appear to be based, is that of Toland v. Sprague, 12 Peters, 300. In that case, at p. 328, Justice Barber, holding that Circuit Courts of the United States have no power to issue process to cite anybody from beyond the territorial limits of the district, states: "Congress might have authorized civil process from any circuit Court to have run into any State of the Union; it has *not* done so." He held that the process acts of 1789 and 1792, touching the process

in the several States, can have no effect when they contravene Sect. 11 of the Judiciary Act of 1789, providing:

"No civil suit shall be brought in a circuit Court of the
18 United States against any inhabitant of the United States in any other district than that whereby he is an inhabitant, or in which he is found at the time of the service of the writ."

However, it is to be noticed, that in this very case, the great Chief Justice, Mr. Taney, opened his dissenting opinion by the statement: "I concur with the majority of the Court in permitting the judgment of the Circuit Court to stand, but I do not assent to that part of the opinion which declares, that the Circuit Courts of the United States have not the power to issue process of attachment against the property of a debtor who not an inhabitant of the United States. It does not appear by the record that this point was raised in the Court below; and I understand from the learned judge who presided at the trial, that it was not made. * * * I think it advisable to abstain from expressing an opinion upon it; and do not assent to that part of the opinion of the Court which declares that the process in question is not authorized by the acts of Congress."

Mr. Justice Baldwin followed the Chief Justice in his dissent as to that point and said: "I agree with the Chief Justice in the opinion delivered by him; if it was necessary I would go further as to the authority of the Courts of the United States to issue foreign attachment."

Mr. Justice Wayne, also in that same case, concurred with the dissent of the Chief Justice, and said: "I think the Circuit Courts of the United States have authority to issue foreign attachments. The decision on that point is not necessary to the decision in this case."

Strange as it may seem, considering the importance of the subject, the only other decision of the Supreme Court of the United States that has been called to our attention, (unless it is Chafee v. Hayward, etc., 20 How., 214), passing upon the question at bar, is the case of ex parte Railway Company, 103 U. S., 795. The issue in the Circuit Court in this latter case was a motion for a rule to show cause why a peremptory mandamus should not issue to the circuit Court, commanding it to set aside its orders dismissing the suit and dissolving
the attachment, and to restore the case to its place on the
19 docket, and to grant the order of service asked for. All the parties were within the United States. C-ief Justice Waite, delivering the opinion, said "This motion is denied, 1, because it is an attempt to use the writ of mandamus as a writ of error to bring here for review the judgment of the circuit court upon a plea to the jurisdiction filed in the suit; and 2, because if a writ of mandamus could be used for such a purpose the judgment below was clearly right. Under Sect. 739 of the Revised Statutes, no civil suit, not local in its nature, can be brought in the circuit court of the United States, against an inhabitant of the United States, by original process, in any other district than that of which he is an inhabitant, or in which he is found at the time of serving the writ," etc.

So it seems that even in this latter case, the question was not necessary to a decision of the suit. The trouble all arises because of

Sect. 11 of the Judiciary Act of 1789 aforesaid, and because all the Circuit Courts that have passed on the question hold that no Act of Congress with reference to process has changed the rule set out in that Act and all subsequent amendments of it.

The case of Pennoyer v. Neff, 95 U. S. 714, is cited by nearly every Court that has passed upon this question since 1877, but to our mind that case does not touch the question at all; the only thing that is decided there is that a judgment in personam can never be rendered against a defendant not personally served with process within a State.

Toland v. Sprague went up from the State of Pennsylvania to the Supreme Court of the United States in 1838, and it seems from that case that foreign attachments had for many years been permitted under the State laws of Pennsylvania, and the same practice followed in the Federal Courts there.

On June 6, 1872, Congress passed an act which is now Sec. 915 of the Revised Statutes, providing that: "In common law causes in the Circuit and District Courts, the plaintiff shall be entitled
20 to similar remedies by attachment or other process against property of the defendant, which are now provided by the laws of the State in which said Court is held, for the Courts thereof * * *."

Three years later, in 1875, in Guillou v. Fontain, 11 Fed. Cases, No. 5, 861, the Circuit Court for the eastern district of Pennsylvania, after stating that such had been the practice as far back as 1809 in the Federal Courts of that district, at least up to the time of Toland v. Sprague, held that this act of June 6, 1872, had greatly enlarged the authority of the Federal Courts in the employment of remedies, and after quoting the material portion of the Act as above, said:

"The Federal Courts in this State are thus invested with undoubted authority to proceed against non-resident persons by attachment of their property, as may be done by the laws of the State."

This is the only case at Circuit which counsel have presented to the Court, or that it has been able to find, holding squarely that the Act of June 6, 1872, empowers Circuit Courts of the United States to obtain service by substitution in foreign attachment cases.

In 4 Federal Statutes Annotated, p. 579, begins a series of notes on the question of foreign attachment in the Federal Courts, and, referring to the Act in question, sets out that: "This act does not confer upon United States Courts jurisdiction to entertain suits by the process of foreign attachment, and * * * the statute and any rule adopted by the state laws do not give a circuit or district Court power thus to acquire jurisdiction over a persons not a resident of the district, not served with process therein."

Citing Central Trust Co. v. Chattancoga, etc. R. R. Co., 68 Fed., 685; Harland v. United Lines Tel. Co., 40 Fed., 308; Anderson v. Shaffer, 10 Fed. 266; Nazro v. Cragin, 3 Dill. 474, etc. Those notes further quote from Erstein v. Rothschild, 22 Fed. 61, and say: "It is to be noted, in respect to this enactment, in the first place,
21 that although its terms cover the case of a foreign attachment, properly so-called, being process in rem against the

goods and lands of a non-resident or absconding debtor, yet no such process can, in fact, issue unless the defendant can be personally served with summons in the district in which the suit is brought; for by section 739, R. S., no suit can be brought against an inhabitant of the United States in any other district than that of which he is an inhabitant or in which he is found at the time of serving the writ, except in the case of absent defendants under sect. 738, when suit is brought to enforce a lien upon real or personal property, * * *."

In Crocker National Bank v. Pagenstecher, 44 Fed. 705, it was held that the provision of the Judiciary Act of 1789, which is now Sec. 1 of the Act of 1888, holding that no suit shall be brought in the circuit court against any person, etc., in any other district than that whereof he is an inhabitant, applies only to suits commenced in that Court, and has no bearing -n the jurisdiction of the circuit court of cases removed to it from a state court, where defendant was not a resident of the district, and wherein the state court had acquired jurisdiction by foreign attachment without personal service.

We are also referred to many other authorities, many of which we examined, such as Carter's Jurisdiction of Federal Courts, p. 170-172, with a large number of cases cited therein; Cooper v. Reynolds, 77 U. S. 309; 2 Desty's Federal Procedure, p. 851; 21 Fed. Cases, No. 12,206, Saddler et al. v. Hudson et al.; 5 Fed. cases, No. 2,688, Chittenden v. Darden; Shainwald v. Lewis, 5 Fed. 510; Dormitzer v. Illinois, etc. Bridge Co. 6 Fed. 217; Boston Electric Company v. Electric Gas Lighting Co., 23 Fed. 838; Noyes et al. v. Canada, 30 Fed. 655; Horsford v. Gudger, 35 Fed. 338; Lackett v. Runbaugh, 45 Fed. 23; Compton v. Jessup, 68 Fed. 263. The result of an examination of all these authorities is, that the overwhelming weight of authority is against the jurisdiction.

22 The Supreme Court of the United States in the case of Henrriet-a Mining Co. v. Johnson, 173 U. S. 224, which came up from the Supreme Court of the Territory of Arizona in 1898, referring to the contention that there was a failure by the Legislature of Arizona to provide for service upon corporations *being* doing business in that territory, where the corporation had no agent upon whom the process might be served under the Statute, said: "It is incredible that the Legislature should have intended to limit its own citizens to such an insufficient remedy when the corporation is actually doing business in the Territory and is represented by a manager or local agent."

The statement has some bearing here. It is almost incredible to think that Congress has made no provision permitting a proceeding in rem in Courts of the United States, although the class of citizens or persons who are most likely to want to invoke process in foreign attachment, are given the right to sue in those Courts. Yet, if all these holdings are right,—and they are so numerous that it would be presumptuous to state the contrary, then Congress has so failed and this Court is without jurisdiction to entertain this suit.

It appears that a previous judge of this court has, in a measure, passed upon this question. The matter before the Court was a motion to amend rule 10, so as to include foreign attachments. He

refused to amend the Rule and held strictly to the doctrine laid down by the Supreme Court in Toland v. Sprague, but admits that in suits to enforce liens for purchase money, mortgages, etc., that the mode of notifying defendants by publication is properly provided for by law. 1 Porto Rico, 450.

The Court is of opinion that this cause of action being a tort, does not come within Sec. 8 of the Judiciary Act of 1875, which
23 provides for citation by publication when the suit is brought "to enforce any legal or equitable lien upon, or claim to, or to remove any encumbrance or lien or cloud upon the title to real or personal property within the district where such suit is brought."

And therefore, although many authorities could be cited on that point, it is deem- unnecessary to discuss it.

The plea to the jurisdiction will therefore be sustained, the alleged service quashed, and the attachment dissolved, with costs.

B. S. RODEY, *Judge.*

Filed Aug. 27, 1906.

24 (Attached to Motion and Affidavit in Support Thereof as an Exhibit.)

Juan de Guzman Benitez, Lawyer—Notary Public.

No. 126.

Deed to Extend the Duration of a Contract of Partnership, Executed by Messrs. "Sucesores de José Hernaiz, a Partnership in Commendam, Dated on the 30th of December, 1901, at San Juan, Porto Rico.

First Copy. Revised.

Number One Hundred and Twenty-six.

In the City of San Juan, Porto Rico, on the thirtieth day of December of the year nineteen hundred and one, before me Mr. Juan de Guzman Benitez, lawyer and notary public of the College of this Island, with residence in this City, there appeared Mr. José Trueba y Munsury, married, merchant, of legal age and resident of this City.

He does appear on his own personal right and also as attorney in fact of Mr. Julian Munsuri y Hernaiz, married, property owner, of legal age, and at present absent in Spain, as shown by the power of attorney executed by the said Julian Munsuri y Hernaiz before me on the seventeenth of October last and filed in the archives for public instruments of this Notary's office under number eighty,
25 which document literally says, to-wit: "Number Eighty.—In the City of San Juan, Porto Rico, on the seventeenth of October, nineteen hundred and one.—Before me.—Mister Juan de Guzman Benitez, lawyer and Notary Public of the College of this Island with residence and domiciled in this City.—there appeared.—Mr.

Julian Munsuri and Hernaiz, married, of legal age, property owner and neighbor of this City.—He asserts he has and in my judgment he possesses the necessary legal capacity to execute this deed of power of attorney and spontaneously says:—That he gives and grants upon and in favor of José Trueba y Munsuri a complete, ample, as sufficient as necessary in law and might be required power of attorney so that he, representing the grantor, on the expiration of the partnership contract "Sucesores de José Hernaiz" of which the said grantor is a silent partner, be able to execute the renewal of the said contract extending the duration of same for one or two years more, under the same clause and conditions which are set forth in the deeds of constitution and renewal heretofore executed on the twenty-ninth of April of the year eighteen hundred and ninety-six, third of May of the year eighteen hundred and ninety-five and present year nineteen hundred and one; so that also in the name and representation of the grantor he asks for the deferring of payment of amounts which the grantor, personally or as guarantor of other persons and partnerships may owe;—subscribing, once obtained, the said renewals, promissory notes or other necessary documents, so that the said obligations shall have their corresponding legal weight;—so that he may substitute and in favor of whomsoever he deem proper, in all or in part, this power of attorney, revoking substitutes to same and appointing others; the grantor offering to accept as effective and valid whatever he accomplishes by virtue of this power of attor-
26 ney.—Thus it is granted, Mr. Francisco Trigo and Mr. José Mercado, both neighbors of this City and who have no legal impeachment to act as such, being present as witnesses; this instrument being wholly read to the grantor and witnesses, after they were advised of the right they had to read it by themselves, which right they renounce, and having been read by me they ratify it and sign it; and of all set forth in the foregoing as well as of the personal knowledge, profession and residence of the grantor, I, the Notary Public, certify.—Julian Munsuri, F. Trigo, José Mercado—(signed) Juan de Guzman Benitez." It agrees with the original of which it is a copy.

He asserts he has and in my judgment he possesses the necessary capacity to execute this deed of extension of partnership and spontaneously says:

First. That by virtue of a deed executed before the ex-Notary of this City, Mr. José Agustin de la Torre y Fremaint, under number one hundred and ninety-five, on the third of May of the year eighteen hundred and ninety-five the aforementioned José Trueba, his constituent Mr. Julian Munsuri and Mr. Isidoro Llona y Arruza, of legal age, single, merchant and resident of the City of Arecibe, constituted a partnership in commendam under the name of "Sucesores de José Hernaiz" domiciled in this city, his constituent Mr. Julian Munsuri y Hernaiz being the silent partner and the relator Mr. Trueba and Mr. Isidoro Llona y Arruza, managing partners; the social capital was one hundred and eleven thousand and thirty-eight dollars of the currency then in circulation, and the duration

of said partnership limited to the thirtieth of March, nineteen hundred and one, unless any of the partners should die or that
27 after the three first years of the said partnership any of the said partners should want to dissolve the same; in which case it will cease as soon as such determination be communicated to the others.

Second. That as is shown by another deed also executed in this city on the 10th. day of August eighteen hundred and ninety-seven, before the Notary Public Mr. Antonio Alvarez Nava y Lobo, under number four hundred and forty, the managing partner Mr. Isidoro Llona y Arruza voluntarily withdrew from the partnership, withdrawing all his capital, the same being exonerated from any future responsibility not only in all deals already concluded and those pending, but also from those arising through deals to be made by the partnership in the future; and the said partnership was continued by the relator and his constituent Mr. Munsuri without any further alteration in its social or partnership contract than that agreed to in regard to the distribution of profits and losses.

Third. That through another deed executed on the sixteenth of February last, under number ninety-seven, and before the Notary Public of this city Mr. Santiago R. Palmer, the contract of partnership was extended from the thirtieth of March, date on which it was to become due, till the thirty-first of December of the present year, stating therein that they agree to continue in force the stipulations and conditions which up to then had governed the partnership, in accordance with the deeds of constitution and modification heretofore mentioned and dated respectively on the third of May, eighteen hundred and ninety-five, and tenth of August, eighteen hundred and ninety-seven; as it thus appears by a first copy of the said deed of the sixteenth of February last, which I have before me, and that has been recorded at folio four hundred and eighty-seven of volume ten provisional partnerships, page number fifteen hundred and ninety-seven, entry six of the Mercantile Registry of this city.

28 Fourth. That as can be inferred from the foregoing, the only partners and interested parties of the aforesaid partnership "Sucesores de Hernaiz" are the said Julian Munsuri y Hernaiz and Mr. José Trueba and Munsuri, here present; and having previously agreed upon the extension of duration of the aforesaid contract, which was to expire on the thirty-first day of the present month, said agreement to be two years more, they do carry it into effect through the present public instrument with the following stipulations, to-wit:

I. That the term of the duration of the partnership which by virtue of the foregoing deeds they had constituted under the title of "Sucesores de José Hernaiz" and domiciled in this city, shall expire on the *thirty-first day of December of the year nineteen hundred and three,* until which date it is herewith extended.

II. That for this extension of the duration of the partnership there shall continue in force all and each of the stipulations which

governed the said partnership in accordance with its deeds of constitution and modification, dated on the third of May, eighteen hundred and ninety-five, and tenth of August, eighteen hundred and ninety-seven, and that of the extension of the duration of the said partnership of the sixth of February of the present year..

III. Therefore the managing partner, Mr. José Trueba y Munsury will continue, during the duration of the extension of the said partnership, in charge of the administration of the partnership, with the use of the partnership signature; with power to carry on in the name of the said firm all sorts of mercantile deals and transactions; to sell, to grant, to trade, to mortgage, to transfer and to encumber its real property and rights; to cancel the mortgages and liabilities at present in force as well as those which may
29 accrue in its favor; to accept and purchase for the said partnership the same kind of properties and rights; to grant general and special powers of attorney; to represent it in the courts in suits or exceptions as might be required, and to execute all kinds of contracts and acts by them in accordance with the requirements of the Commercial Codes with those of the Civil Codes or those set by the Mortgage Law.

IV. All powers and mandates granted by the partnership, which up to the present date have not been revoked shall continue in force during all the extension of the duration of the contract agreed to in this deed.

Under which stipulations they extend the duration of the Partnership in commendam "Sucesores de José Hernaiz" until the thirty-first of December of the year nineteen hundred and three.

And I, the Notary Public, authorizing the present instrument, advise him that from a copy of this deed the Mercantile Registry shall take record, inasmuch as without this requisite it will have no effect against third parties, though said third parties may take advantage of whichever of its legal effects be in their favor.

It was thus granted by Mr. José Trueba y Munsuri in its own name and in the name of his represented, being instrumental witnesses to the present deed Mr. Francisco Trigo and Mr. Cristobal Real, who assert that they have no legal impediment to act as such; this instrument being wholly read to the grantor and to the witnesses, after advising them of the right they had to read the same by themselves, a right which they renounce, and after I had read the same to them, they ratified its context, and signed; and of all that is in this instrument set forth as well as of the knowledge, profession and residence of the grantor, I the Notary Certify.—José Trueba, F. Trigo, Cristobal Real (signed) Juan de Guzman
30 Benitez. (There appears a stamp which has been placed over, to render useless, two Internal Revenues, of fifty cents each.

It corresponds exactly with its original, which is being filed under number one hundred and twenty-six of my present protocol, and from which this copy was taken. And as a consequence of such fact, through request of the said partnership "Sucesores de José

Hernaiz," which term of duration is herewith extended, I issue the present first copy which I scroll and sign in this four double sheets, having taken due note of same, in the city of San Juan, Porto Rico, on the same date of its execution.

Scrolled and signed by Juan de Guzman Benitez. There is a notary's rubber stamp over a fifty cents Internal Revenue one.

The preceding document has been registered at folio 27, volume 18 of Partnerships, sheet number 597 duplicate.

Entry 8th. San Juan, Puerto Rico, January 24th, 1902.

The Register signed José Benedicto.

Honoraries, etc.

Copied at folio 82, volume 17 of this Municipality Fa. No. 842, entry fourth. Caguas, December 31st, 1903.

(Signed) S. ABELLA BASTON.

31 In the District Court of the United States for Porto Rico.

SUCESORES DE JOSÉ HERNAIZ, in Liquidation, Bankrupts.

To the Hon. Bernard S. Rodey, Judge of the District Court of the United States for the District of Porto Rico:

The petition of Sucesores de José Hernaiz, Merchants, in liquidation, composed of José Truebas Munsuris, general partner, and Julian Munsuris y Hernaiz, limited partner, of the City of San Juan in the Island of Porto Rico,

Respectfully represents that they have had their principal place of business for the greater portion of six months next immediately preceding the filing of this petition at San Juan, Porto Rico, within said judicial district; that they owe debts that they are unable to pay in full; that they are willing to surrender all their property for the benefit of their creditors, except such as is exempt by law, and desire to obtain the benefit of the Acts of Congress relating to Bankruptcy.

That the schedule hereto annexed, marked "A," and verified by your petitioner's oath contains a full and true statement of all the debts of said firm and (so far as it is possible to ascertain) the names and places of residence of their creditors, and such further statements concerning said debts as are required by the provisions of said Acts.

That the schedule hereto annexed marked "B," and verified by your petitioner's oath, contains an accurate inventory of all their property, both real and personal, and such further statements
32 concerning said property as are required by the provisions of said Acts:

Wherefore, your petitioners pray that they may be adjudged by the Court to be bankrupts within the purview of said acts.

SUCS. DE JOSÉ HERNAIZ, LD.
JOSÉ TRUEBA,
Petitioners.

HENRY F. HORD,
Attorney for Petitioners.

3—177

UNITED STATES OF AMERICA,
District of Porto Rico, ss:

I, José Truebas Munsuris, one of the petitioning debtors mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true, according to the best of my knowledge, information and belief.

JOSÉ TRUEBA, *Petitioner.*

Subscribed and sworn to before me, this 26th day of September A. D. 1906.

[SEAL.] JUAN GUZMAN BENITEZ,
Notary Public. Official Character.

33 In the District Court of the United States for Porto Rico.

In the Matter of SUCS. DE JOSÉ HERNAIZ, in Liquidation, Bankrupts.

Order of Reference.

Whereas Successors of José Hernaiz, in liquidation, in the District aforesaid, on the 26th day of September, A. D. 1906, were duly adjudged bankrupts upon a petition filed in this Court by them on the 26th day of September, A. D. 1906, according to the provisions of the Acts of Congress relating to bankruptcy.

It is thereupon ordered that said matter be referred to Andrés B. Crósas, one of the Referees in Bankruptcy of this Court, to take such further proceedings therein as are required by said Acts; and that the said Sucs. de Hernaiz, in liquidation, shall attend before said Referee on the 12th day of October, at San Juan, and thenceforth shall submit to such orders as may be made by said Referee or by this Court relating to said voluntary bankruptcy.

It is further ordered that notice to creditors be published in English in the "Porto Rico Review," and in some Spanish paper of general circulation in the Island of Porto Rico.

September 29, 1906. San Juan, P. R.

B. S. RODEY, *Judge.*

34 In the District Court of the United States.

In Bankruptcy. No. 22.

In the Matter of SUCESORES DE JOSE HERNAIZ, in Liq., Bankrupt.

List of Debts Proved.

The following is the list of creditors who have proved their debts:

Name.	Residence.	Consideration.	Amount.
Julian Munsuri	San Juan, P R.	Loan	$11,719.00
A. & S. Henry & Co.	Manchester, Eng.	Merchandise.	£1873-13-9
S. E. Heymann & Co.	2 Stone St., N. Y.	"	691.42
Tefft, Weller & Co.	326 B'dway, N. Y.	"	10,559.30
Sherman, Reid & Co. (Sherman & Sons Co.)	64 Leonard St., N. Y.	"	542.46
Bernheimer & Walter	120 Franklin St., N. Y.	"	2473.36
Garner & Co.	2-16 Worth St., N. Y.	"	1218.08
Sweetser, Pembrook & Co.	25 Broad St., N. Y.	"	1700.70
Everett, Heany & Co.	353-355 Canal St., N. Y.	"	1304.12
Grinnell, Willis & Co.	44-46 Leonard St., N. Y.	"	1776.36
Haller & Long.	73-80 Worth St, N. Y.	"	1293.65
Schill, Seebolm & Co.	Manchester, Eng.	"	£396-9-0
American Trading Co.	15 Broad St., N. Y.	"	$1254.90

I certify that the foregoing is a true list of all the claims filed since January 2, 1907, when the last list was certified to the Court.

San Juan, Porto Rico, Oct. 10th, 1907.

ANDRES B. CROSAS,
Referee in Bankruptcy.

Filed with Referee Oct. 10, 1907.
Filed by Referee with Clerk Oct. 12, 1907.

35 In the United States District Court for Porto Rico.

In Bankruptcy.

In the Matter of SUCCESSORS OF JOSE HERNAIZ, in Liquidation, Bankrupt.

Petition for Restraining Order.

And now comes William H. Hawkins, attorney for various creditors herein, and shows unto the Court that evidence having been taken in the above mentioned cause, whereby it is contended that Julian Munsuri is a general partner in the firm Sucesores de José Hernaiz and therefore liable for the debts of the firm to the full extent of his property, and that the said Julian Munsuri is the owner of and through his agents possessor of, houses No. 4 Cruz Street,

SPOTS ON PAGES

No. 17 Cruz St., and No. 32 San Francisco St., San Juan, and certain other country properties in the interior of the island, including those at Utuado, and that he is through his agents receiving the rents and profits from said properties, and that the said Julian Munsuri is absent in Spain where he has been for some time, and that the said rents and profits are being sent to him monthly, now therefore, the said William H. Hawkins as attorney and representative of various creditors herein,

Petitions the referee to enter a restraining order herein enjoining said Julian Munsuri or his agent or agents from selling, encumbering, or in any way disposing of the said properties or any properties which may appear upon the schedule of his property hereinafter to be filed by the said Julian Munsuri or his agent, and ordering the
36 said Julian Munsuri, his agent or agents to deposit with the referee all rents and profits received from the said houses and properties until the question of the general liability of the said Julian Munsuri for the debts of the bankrupt firm Sucesores de José Hernaiz shall be determined by the Court.

WM. H. HAWKINS,
Attorney for Creditors.

May 14, 1907.

37 In the United States District Court for Porto Rico.

In Bankruptcy.

In the Matter of SUCCESSORS OF JOSE HERNAIZ, in Liquidation, Bankrupt.

Restraining Order.

And now, this 14th day of May 1907, on the motion and petition of William H. Hawkins attorney for various creditors, and after hearing Wenceslao Bosch and Joseph Anderson, Jr., on behalf of Julian Munsuri, in opposition and it appearing that the rents and profits from the property of the said Julian Munsuri which are claimed should be subjected to the claims of the creditors of the bankrupt are sent monthly to Spain, and it further appearing that the said attorneys for Julian Munsuri desire time in which to take out a deposition to get the evidence of the said Julian Munsuri upon the various questions at issue,

Now therefore, it is ordered that a notice of lis pendens be filed in the Registry of Property and that until the said evidence is obtained and there has been a decision of the Court upon the various questions raised, the said Julian Munsuri, his agent or agents, be enjoined and restrained from in any way selling or encumbering or disposing of the properties owned by him here in Porto Rico, and set forth on the record and in the petition praying for an injunction, and the said Julian Munsuri his agent or agents is hereby ordered to

deposit with the referee all moneys received from the said properties as rents and profits.

ANDRES B. CROSAS, *Referee.*

Filed with Referee May 14, 1907.

38 In the United States District Court for Porto Rico.

In Bankruptcy.

In the Matter of SUCCESSORS OF JOSE HERNAIZ, in Liquidation, Bankrupt.

Petition and Order to File Schedules.

And now comes William H. Hawkins attorney for various creditors herein and petitions the referee to order Julian Munsuri, who claims to be a special partner in the above entitled firm, or his agent, to file schedules of property of the said Julian Munsuri.

WM. H. HAWKINS,
Attorney for Creditors.

It — hereby ordered that Julian Munsuri or his agent files schedules of property in due form as required by law of all the individual property owned by said Julian Munsuri, and that the said Julian Munsuri or his agent be notified of this order.

ANDRES B. CROSAS, *Referee.*

May 14, 1907. San Juan, P. R.

39 In the District Court of the United States for Porto Rico.

In Bankruptcy. No. 22.

In the Matter of SUCESORES DE JOSE HERNAIZ, in Liq., Bankrupt.

To the Marshall of the United States District Court for Porto Rico:

You are hereby ordered and required to collect all rents for the houses known as No. 4 Cruz St., No. 17 Cruz St. and No. 32 San Francisco St., of this city, notifying each and every one of the tenants thereof, that rents hereafter are to be paid to you as Marshal of this Court, and for that purpose you are authorized to make out receipts in the name of Wm. H. Hawkins, Trustee for the said rents. You are further directed and instructed to pay out of the said rents collected such monies as may be necessary for the expense and maintenance connected with the said houses, including the interest on the mortgage held by the American Colonial Bank on the said houses, and amounting to about one hundred and fifty ($150.00) dollars.

San Juan, P. R., Oct. 30th, 1907.

ANDRES B. CROSAS, *Referee.*

In the United States District Court for Porto Rico.

In Bankruptcy.

In the Matter of SUCCESSORS OF JOSE HERNAIZ, in Liquidation, Bankrupt.

Whereas, on the 14th day of May, 1907, the Referee in the above entitled matter made the following order:

"Now therefore, it is ordered that a notice of lis pendens be filed in the Registry of Property and that until the said evidence is obtained and there has been a decision of the Court upon the various questions raised, the said Julian Munsuri, his agent or agents, be enjoined and restrained from in any way selling or encumbering or disposing of the properties owned by him here in Porto Rico, and set forth on the record and in the petition praying for an injunction, and the said Julian Munsuri his agent or agents is hereby ordered to deposit with the Referee all moneys received from the said properties as rents and profits."

And whereas the following order was also made on the said 14th day of May, 1907, by said Referee:

"Is hereby ordered that Julian Munsuri or his agent files schedules of property in due form as required by law of all the individual property owned by said Julian Munsuri, and that the said Julian Munsuri or his agent be notified of this order."

And now at this time Sweet, Rossy & Campillo having made an special appearance in said cause in behalf of said Julian Munsuri,
said appearance having been made for the filing of a motion
41 to vacate and set aside the two orders above mentioned because of lack of jurisdiction by the Referee over the person or property of said Julian Munsuri, and the Referee being satisfied in the premises that he is without jurisdiction as above set forth, now, therefore:

It is ordered that both of said orders made on the 14th day of May, 1907, under which it was ordered that a lis pendens be filed in the Registry of Property affecting the property of said Munsuri, and also that said Munsuri be enjoined and restrained from in any way selling or encumbering or disposing of said property; and further that the said Munsuri be required to deposit with the said Referee all moneys received from the said Property as rents and profits; and the said second order requiring said Munsuri or his agent to file schedules of his personal property with the Referee, be and the same are hereby vacated and set aside as prayed, for the reason that said Referee is without jurisdiction in the premises.

ANDRÉS B. CROSAS,
Referee.

Dated this 27th day of June, 1907.

42 In the District Court of the United States for Porto Rico.

In Bankruptcy. No. 22.

In the Matter of SUCESORES DE JOSE HERNAIZ, in Liq., Bankrupt.

Petition to Review Order.

And now comes the creditors Heller & Long, Tefft & Co., Bernheomer & Walter, A. S. Henry & Co., and other creditors, and respectfully represent that the said creditors of the Bankrupt state are aggrieved by the findings of the Referee in Bankruptcy, Andres B. Crosas, Esq. and the orders entered on said findings, to wit: That upon the petition of your creditors asking for a restraining order against Julian Munsuri or his agents, restraining him or his agents from transferring or disposing of any of his property to the jurisdiction of this Court, the Referee entered said restraining order on the 14th day of May, after hearing the said Munsuri in opposition thereto, a copy of which petition and order thereon os hereto annexed. That on the — day of June, 1907, the said Munsuri, appearing specially by his attorneys Sweet, Rossy & Campillo moved to set aside and vacate the said restraining order; that on the 27th day of June, the Referee entered an order vacating the said restraining order of May 14th 1907, no notice having been given the creditors or their Attorney, of the hearing on said motion and without hearing anybody in opposition, a copy of which motion and the order thereon are hereto annexed.

43 Wherefore said petitioners pray this Honorable Court to review the findings and orders of the said Referee, and that the Referee herein certify said orders and findings to the Court for that purpose.

W. H. HAWKINS,
Attorney for Creditors.

44 In the District Court of the United States for Porto Rico.

In Bankruptcy.

In the Matter of SUCS. DE JOSÉ HERNAIZ, in Liq., Bankrupt.

Certificate by Referee to the Judge.

I, Andrés B. Crosas, Referee in Bankruptcy, do hereby certify that in the course of the proceeding in above-entitled matter Sucesores de José Hernaiz in liquidation were duly adjudicated bankrupts on the 26th day of September, A. D. 1906. It appears that said firm was a limited partnership (Sociedad en Comandita) formed under the laws of Porto Rico, consisting of Julian Munsuri special partner and José Truebas general. It further appears that said firm

was established by articles of partnership executed on that date before the Notary Juan Guzman Benitez. Subsequently the firm became embarrassed for we find on June 17, 1902, a deed executed before the Notary Juan Guzman Benitez by the said firm of Sucs. de José Hernaiz, recognizing as due and owing Julian Munsuri the sum of $40,000.00. Which it is alleged was obtained by the said Julian Munsuri for the benefit of said firm by mortgaging certain properties owned by him personally in San Juan to the American Colonial Bank, said money it is alleged being used to make a settlement with various creditors of the firm whereby the said Munsuri acquired the rights to the said claims.

It is alleged that said sum was advanced by Julian Munsuri over and above the interest he had therein as special partner, which it is alleged was already exhausted before this transaction.

In 1903 said firm became insolvent and a liquidation of its business appears commenced. In 1904 Julian Munsuri left Porto Rico for Spain and the said José Truebas continued the liquidating of the business of said firm as the general partner thereof, the said Julian Munsuri not having returned to Porto Rico since his departure as before stated.

In 1904 it also appears that Wenceslao Bosch, a Spanish lawyer of San Juan, was appointed liquidator. Finally in October of 1906 José Truebas as the general partner filed a petition in bankruptcy in this Court and the firm was adjudicated as aforesaid. The schedules as filed set forth that there were but three creditors: Messrs. Heller and Long, Julian Munsuri and Ed. Maurer.

At the first meeting of creditors on October 22, 1906, Wenceslao Bosch as attorney for Julian Munsuri filed a prima facie claim in the sum of $11,719.11 which was subsequently proven in form on April 8, 1907.

On Nov. 15, 1906, William H. Hawkins filed the claim of Heller and Long. The Court subsequently disposed of the claim of Ed. Maurer. Subsequently Mr. Hawkins as attorney for Heller and Long and various other creditors challenged the conduct of Julian Munsuri as fraudulent and alleged that said Munsuri had acted in such a manner while appearing as special partner as to render him liable with all his personal property to the various creditors as even the general partner, and that as a consequence he should likewise be declared a bankrupt.

At an adjournment of the creditors' first meeting held on May 14, 1907, upon petition of various creditors as represented by W. H. Hawkins the Referee entered an order requiring Julian Munsuri or his agent to file schedules of the individual property of the said Julian Munsuri.

Mr. Wenceslao Bosch and Mr. Joseph Anderson, Jr., were present as attorneys representing Julian Munsuri in the matter of his claim, and Mr. Hawkins representing the various creditors. On the same day and date a restraining order was entered upon the petition of W. H. Hawkins representing the various creditors restraining Julian Munsuri or his agents from disposing of any property owned by him

and requiring him or his agent to turn over to the Referee in
46 Bankruptcy all rents accruing from said property. These orders being based upon the prima facie case presented by Mr. Hawkins on the incorrect conduct upon the part of Julian Munsuri as special partner, no testimony being offered in rebuttal through the absence of Julian Munsuri. The Referee did not have said order registered with the Registrar of Property as there were no immediate funds with which to defray the expenses thereof, but informed the attorney in fact José Truebas through his attorney Mr. H. F. Hord that said order was to be respected and the Referee was assured that it would be.

Furthermore the Referee allowed the rents that may have been collected to remain in the hands of José Maria Peña to be accounted for by him upon the suggestion of Mr. Hawkins, and that they were not is due no doubt to the subsequent order vacating the restraining order of June 27, 1907.

Subsequently on June 15, 1907, Sweet, Rossy & Campillo filed a motion asking that said restraining order and the order requiring the filing of schedules by Julian Munsuri of May 14, 1907, be vacated upon the ground of want of jurisdiction in the premises.

The Referee being pressed for a decision in the matter notwithstanding the absence of Mr. Hawkins thought it his duty and right to decide the matter even though it was impossible to notify Mr. Hawkins, as it appeared to the Referee that apparently he had no jurisdiction. It is from this decision that Mr. Hawkins, attorney for various creditors appeals and petitions a review of this question by the Court. There is nothing on record to prove that prior to the adjudication the essential consent of Julian Munsuri to this Bankruptcy proceeding was obtained. But aside from this question the Referee is of the opinion that this being in the nature of an involuntary proceeding against a person wholly without the jurisdiction of the Court, who is neither domiciled nor has his principal place of business within this district as required by Section 2 of the Bankruptcy Act, *and* consequently he has no jurisdiction over the subject
matter without due notice to the said Munsuri as is required
47 under the circumstances. For the said Munsuri apparently has been a special partner in a firm which has ceased business operations some four or five years ago, and in which he was solely responsible for such amounts or property as was originally invested by him and after being exhausted he apparently aided the firm by loaning it money, and subsequently retired completely not only from the business but also from the jurisdiction of this Court.

The Referee cannot insist too strongly upon the fact that despite an apparent appearance in this proceeding of Julian Munsuri by filing his claim that this does not make him a party to the proceeding for any other but this purpose, until personal service or even substituted service is had and obtained on the said Munsuri to make him amenable to the jurisdiction of this Court. For in the opinion of the Referee upon the authorities cited it would be an abuse of equity to attempt to obtain jurisdiction of the person and property

of anyone outside the jurisdiction of this Court without voluntary consent or due process which the Referee believes has not been accomplished here, and cannot find any case on all fours with that in bar warranting such action.

Were this a voluntary proceeding this question would be eliminated but here it has been attempted to proceed involuntarily against one who had not proper notice.

Despite the circumstance of the absence of Mr. Hawkins when especially it was impossible to tell when his return could be counted on, the Referee believes it was not only his right but his duty to settle this question of jurisdiction and if he has erred it is for the Court to so decide for where there is a lack of jurisdiction over the subject matter the question may be raised at any time, and the Court may listen to anyone who may have a right to be heard without notice to parties absent from the district.

Furthermore the Referee took such steps as were in his opinion sufficient to secure compliance with the said restraining order while in force but that his order vacating the same no doubt allowed
48 the parties to avoid an accounting is incident to the proceeding. Such being the statement of both the fact and the law as the Referee sees them, this matter is respectfully referred to the Court for review with the copies of the petitions for said orders, copies of the said orders and the motion and brief made by Sweet, Rossy & Campillo.

October 22, 1907, San Juan, P. R.

ANDRES B. CROSAS, *Referee.*

49 In the District Court of the United States for Porto Rico.

In Bankruptcy. No. 22.

In the Matter of SUCESORES DE JOSE HERNAIZ, in Liq., Bankrupt.

Motion.

And now comes Wm. H. Hawkins, as Attorney for various creditors herein, and moves the Court that Julian Munsuri y Hernaiz, who claims to be a special partner in the above firm and as such having only a limited liability, be declared a full or general partner in the said firm, and generally liable to the full extent of his property for the payment of the just debts of the said firm. And further that the said Julian Munsuri be ordered to deliver over to the duly appointed Trustee herein, all his property not exempt by law to be administered by this bankruptcy Court for the purposes of paying the debts of the said firm.

San Juan, P. R., Oct. 22, 1907.

WM. H. HAWKINS,
Attorney for Creditors.

50 In the District Court of the United States for Porto Rico.

In Bankruptcy. No. 22.

In the Matter of SUCESORES DE JOSÉ HERNAIZ, in Liq., Bankrupt.

Order.

In accordance with the opinion filed herein this day upon the hearing on the petition of Wm. H. Hawkins, Attorney for the creditors, for a review of the order of the Referee in Bankruptcy, entered on the 27th day of June, 1907, vacating the orders of May 14th, 1907, whereby Julian Munsuris was restrained and enjoined from disposing of any of his property and was ordered to file schedules of his individual property, and upon the motion that Julian Munsuris be declared a general partner of the bankrupt firm, it is:

Adjudged and decreed that the said Julian Munsuris was a general partner in the bankrupt firm of Sucesores de José Hernaiz, and as such liable for the debts of the said firm, and it is:

Ordered, adjudged and decreed that the Referee erred in entering the order of June 27th, 1907, vacating the said orders of May 14th, 1907, the said order of the Referee of June 27th, 1907 is vacated and the action of the said Referee is reversed.

Entered this 25th day of October, 1907.

B. S. RODEY, *Judge.*

51 In the District Court of the United States for Porto Rico.

In Bankruptcy. No. 22.

In the Matter of SUCESORES DE JOSE HERNAIZ, Bankrupts.

Opinion Reversing Referee's Holding Reinstating Injunction Against One of the Bankrupts and Holding Latter to be a General Partner and Requiring Schedules of His Private Property to be Filed.

This cause has been some time before the Referee in Bankruptcy. It appears that months ago W. H. Hawkins, Esq., counsel for divers of the creditors, appeared before the Referee and requested him to issue an order against the alleged limited partner Julian Munsuri, requiring the latter to file schedules of his individual property as a general partner in the premises, and further requesting the Referee to issue an order of injunction against the said Munsuri restraining him until the further order of the Court from disposing of any of his private property situated in this District, and requesting that a cautionary notice in that behalf be issued by the Court to the proper registrar of property. It appears that the Referee granted both of these requests, but failed to record the warning notice in the registry office. It further appears that shortly thereafter the Referee re-

scinded his action in this behalf, and annulled or attempted to annul his order of injunction, on the ground that he had no jurisdiction of the said Munsuri under the ruling of this Court in the case of Belen Ortiz et al. v. Evaristo Alcala del Olmo et al., decided something like a year ago.

Thereupon, or as soon thereafter as he became aware of
52 this action of the Referee, counsel for the creditors appeared before said Referee and excepted to his action in the premises and petitioned that the matter be certified to the Court for a ruling. Counsel further filed before the Court itself a motion that, on the evidence already introduced before the Referee, Munsuri be declared and be held to be a general, and not a special partner of the bankrupt firm.

On this motion and on the issue raised by the certificate of the Referee, counsel has had a full hearing,—no person appearing for Munsuri although parties who represented him before the Referee were duly cited. A transcript of the evidence taken before the Referee, as well as the exhibits introduced, consisting of letter books, papers, ledgers, etc., was duly submitted.

Having thus heard counsel at length, and consulted the statutes of Porto Rico with reference to limited partnerships, and having examined the text books, reports and citations as submitted by counsel, we are constrained to observe and hold:

That the law of Porto Rico as to limited partnerships, as set out in the statute embraced in the commercial code, is practically the rule of limited partnerships as known in France, Spain, Louisiana and other civil law countries and states. That under such law a limited partner is not permitted to interfere unduly in the partnership affairs without subjection himself to being held liable in solido as a general partner. In this case we find from the evidence, the exhibits, the letter press copy books, etc., as aforesaid, that the bankrupt Munsuri did in fact unduly, and contrary to the Porto Rican statute, interfere in the said alleged limited partnership, and that he was in fact as to the creditors as much as general partner therein as was the duly constituted general partner José Trueba.

Munsuri largely managed the business, bought and sold goods for
the firm, went to the States as its purchasing agent, and was
53 in fact the managing and dominating person in connection with it. In truth, we are inclined to believe that the firm name under which the business was conducted, that is "Sucesores de José Hernaiz," was not such a firm name as could be used in such a limited partnership under the Porto Rican law, the letters S. en C. (Sociedad en Comandita) never having been used either on the sign on any of the business places, or on the stationery. Further it appears that at a time when the concern was insolvent, this man Munsuri induced the declaring of a dividence to himself and the said Trueba of almost twenty-five thousand dollars. The letter books show that Munsuri went to the States in the summer or fall of 1902 and had the general partner write letters to many wholesale houses in New York, all of whom are now creditors as a result of purchases then made. These letters were written under the firm name, refer-

ring to him as "our Mr. Julian Munsuri" who was going there to buy goods, etc., "in our name." It appears further that the general partner had no means whatsoever, save what he may have had in the business itself and that this man Munsuri was a comparatively wealthy man in Porto Rico, and the only person whose commercial standing could give any apparent commercial weight to the business in question. We therefore, on the evidence—and it is ample—unhesitatingly hold him to be in law as to creditors, liable as a general partner in the concern, and we further hold that he must file schedules of his private property in the premises, as required by the bankrupt act. We further hold that the Referee erred in rescinding his order of injunction aforesaid, and his order rescinding the same will therefore be, and is hereby vacated, and a cautionary notice will an once issue to the proper registry offices, describing the property sought to be bound, in such ample form as may be proper.

We are of opinion that the Court has full and complete jurisdiction of the said Julian Munsuri under the bankruptcy act,
54 because the general partner filed the petition as and of the "Sucesores de José Hernaiz," merchants, in liquidation," composed of José Trueba Munsuri, general partner, and Julian Munsuri y Hernaiz, limited partner, *partner*, and because the said Julian Munsuri y Hernaiz thereafter, through one Wenceslao Bosch thereunto duly empowered in writing to represent him, filed proof before the Referee of a claim in his own favor against said bankrupt concern, amounting to over eleven thousand dollars. Section 5-c of the bankruptcy act, in our opinion, gives the Court this jurisdiction. "The Court of bankruptcy which has jurisdiction of one of the parties, may have jurisdiction of all of the partners and of the administration of the partnership and individual property."

We have ascertained that some years ago this same firm at the petition of their creditors, were declared involuntary bankrupts in this Court, but that for some reason all of the petitioning creditors came into Court and consented that the proceeding be dismissed, which was done. We have no knowledge why this was done, nor as to what effect the same may have on the rights, if any, of such creditors before the present Referee, and as to this we express no opinion at the present time.

Proper orders, etc., to make effective the views herein expressed, will be prepared and entered, and will issue as may be proper.

(Sgd.) B. S. RODEY, *Judge*.

Filed October 25, 1907.

55 Office Copy.

First Motion on Ground of Jurisdiction.

In the United States District Court for Porto Rico.

In the Matter of SUCCESSORS DE JULIAN MUNSURI, Bankrupt.

Notice of Motion.

To William H. Hawkins, Esq., attorney for creditors in the above entitled matter:

You will please take notice that on Thursday the 5th day of March, 1908, the undersigned counsel for Julian Munsuri, appearing specially, will present the motion hereto attached for the consideration of said Honorable Court. The motion is based upon the files, records and papers in said proceeding. This motion will be presented to the Judge of said Court at his chambers in the city of San Juan, at ten o'clock in the forenoon of said day or as soon thereafter as counsel can be heard.

SWEET, ROSSY & CAMPILLO,
Solicitors for Julian Munsuri, Appearing Specially.

Dated: Feb. 27, 1908.

56 In the United States District Court for Porto Rico.

In the Matter of SUCCESSORS DE JOSE HERNAIZ, Bankrupt.

Motion.

Now comes Julian Munsuri in the above entitled matter, by his solicitors, Sweet, Rossy & Campillo, appearing specially for the purpose of this motion, and for no other purpose, and as to the said Julian Munsuri personally objecting to the jurisdiction of this Court adjudicating the matters and things relative to the personal or private property of said Munsuri; and thereupon, appearing specially as aforesaid, and reserving all objections to the many errors and imperfections in the proceedings heretofore had relative to said Munsuri, moving that all orders heretofore made by this honorable court sequestrating any property or moneys belonging to said Julian Munsuri, issuing any injunction or injunctions, appointment of a trustee or trustees or any order affecting in any manner any of the rights, property or interests of said Julian Munsuri individually in said proceeding be vacated, dissolved and dismissed, upon the following ground, to wit:

1. That this Honorable Court is without any jurisdiction whatsoever over the person, rights, interests or property of the said Julian Munsuri.

2. This motion is based upon the files, records and pro-
57 ceedings of every character and kind invoked in said proceeding.

SWEET, ROSSY & CAMPILLO,
Solicitors for Julian Munsuri,
Appearing Specially for the Purpose of this Motion.

Dated: Feb. 27, 1908.

Filed March 2, 1908.

58 *Supplemental Motion on Ground of Settlement.*

In the United States District Court for Porto Rico.

In the Matter of the Proceedings in Bankruptcy of the SUCCESSORS OF JOSE HERNAIZ.

To the Honorable Judge of the above entitled Court:

Now comes Julian Munsuri, by his solicitors Sweet, Rossy & Campillo, appearing specially for the purposes herein expressed, and for no other purpose, and still denying the jurisdiction of this Honorable Court in the premises, and submits the following motion upon the facts herein set forth, these facts and this motion by permission of the Court to be considered as supplemental to the motion and the law already filed in this Honorable Court on the 2nd day of March, 1908, and later submitted for consideration orally and by brief, and at this time held under advisement:

I.

The above mentioned solicitors for said Julian Munsuri still denying the jurisdiction of this Honorable Court as aforesaid, say that on the 13 day of June, 1903, there were filed in this Honorable Court the petition of Sweetzer Pembroke & Co. by Dexter & Hord; Sherman Reid & Co. by Dexter & Hord, now members of this bar, but at that time constituting the firm of Dexter & Hord, as above indicated; and the American Trading Co., by Jaime Annexy, with Dexter & Hord as his attorneys, said petition praying that the said firm of Successors of Jose Hernaiz, as well as the individual
59 members thereof be declared involuntary bankrupts, the petition having been verified by Henry F. Hord and Jaime Annexy. Reference is respectfully made to said petition, the same being of record in this Court.

II.

That on the 20th day of October, 1903, Teft, Weller & Co. filed a petition to be admitted as creditors of the defendant firm, alleging an indebtedness to them of $14,065.80, which petition was allowed.

III.

That on the 11th day of November, 1903, the firms of Benheimer & Walter, Garner & Co., and Heller & Long filed a petition in this Honorable Court whereby they prayed to be admitted as creditors of the firm of Successors of Jose Hernaiz, alleging as a reason therefor that the original petitioners Sweetzer, Pembroke & Co., Sherman Reid & Co. and the American Trading Co. had made a settlement with the alleged bankrupts, and that because thereof the petitioners, under date of the petition of November 11, feared that their interests might be neglectd, which petition was duly allowed. Reference is respectfully made to said petition, the same being of record in this Honorable Court in said proceedings.

IV.

That on the 7th day of December, 1903, in accordance with the order of the Court, the defendants filed what purported to be and appears to have been accepted as a true and correct list of their creditors and the amount due to each, which schedule was duly verified by J. Trueba, and signed by N. B. K. Pettingill, as the attorney for defendants; this order was made by the Court upon
60 the basis of requiring defendants to notify all creditors of a motion made to dismiss the proceedings in involuntary bankruptcy. The said schedule was thereupon furnished by the defendants and filed December 7, 1903. The said schedule is made a part of this motion, the same as if it were here written in full, and is attached hereto, marked Exhibit "A."

V.

After filing the motion to dismiss, this Honorable Court did on the 20th day of January, 1904, order the Clerk of this Court to notify all creditors of the defendants of the said application to dismiss said proceeding; later two of said creditors to wit: Heller & Long, with a credit of $1,293.37 and Edward Maurer with a credit of $4,073.67 appeared and opposed the granting of the order to dismiss; whereupon this Honorable Court did on the 20th day of February, 1904, file its opinion refusing to dismiss said proceedings.

VI.

It is further represented that the total indebtedness of the defendants, exclusive of the indebtedness due Julian Munsuri, was $72,978.88, at the time said schedule was filed; but it appears that said Julian Munsuri had settled with all of the creditors except the said Edward Maurer and the said Heller & Long, the total indebtedness to both firms amounting to $5,367.04, and it further appears that as to all of the creditors, except the two last named, no objection was filed to the dismissal of said action.

VII.

That said Julian Munsuri, as it appears by various motions and documents filed in the said action referred to, as well as by individual receipts now in the possession of said Julian Munsuri, or his attorneys, which receipts the solicitors in behalf of said Julian
61 Munsuri now respectfully exhibit to this Honorable Court, show that said Munsuri had settled with all of the creditors of said defendants, except the said Edward Maurer and the said Heller & Long holding as aforesaid their separate receipts therefor, made either by their attorneys, their agents, or their attorneys in fact.

VIII.

That while the said papers and records in said cause are quite voluminous, yet it is not thought necessary to present the same as a part of this motion, except as they have been referred to herein; but the same are in the archives of this Honorable Court and will be produced for inspection if it is so desired, but it appears that no final order was ever made, and it further appears that said proceedings were dropped after the said compromise with the said creditors as aforesaid.

IX.

It is further represented that the said Ed. Maurer commenced an action in the District Court of Porto Rico for the District of San Juan against the defendants, the said action being for the amount set forth in the bankruptcy proceedings herein referred to, and that said action was prosecuted to a judgment in said Court where the same now rests; but that said litigation in said District Court of San Juan was so annoying and so expensive, together with the proceedings referred to herein, that the said defendants, Successors of Jose Hernaiz did file a petition in voluntary bankruptcy in this Honorable Court on the 26th day of September, 1906 whereby this Court declared said firm bankrupts.

X.

That said Julian Munsuri is a Spaniard and a subject of the King of Spain, and that after settling with the creditors of said firm, with the exception of Heller & Long and Edward Maurer, as stated, the said Julian Munsuri who, it is claimed, is a special partner
62 in the firm of Successors of Jose Hernaiz, departed from Porto Rico, retired from business and settled in Spain, where he has since resided and is now residing.

XI.

That under the said proceedings of voluntary bankruptcy, whereby the said defendants were adjudged bankrupt on the 26th day of September, 1906, various witnesses were examined, and the proceedings in said action were carried to great length by means

of examinations of witnesses, filing of motions, orders and other proceedings, and that among other things and acts the Referee in bankruptcy, who heard all of the said testimony and made said orders, was proceeding at the solicitation and request of said Heller & Long, the only creditor who filed a claim against said defendants, except said Julian Munsuri, who caused to be presented the balance due him on account of money loaned to said firm; but that all of said evidence had been adduced without service upon or notice to Julian Munsuri that such step was contemplated as against him individually, and a motion was made to this Honorable Court to declare the said Julian Munsuri a general partner in lieu of a special partner, and thereupon upon the said testimony adduced as aforesaid and upon books and accounts and letters, all in the Spanish language, the Court held the said Julian Munsuri to be a general partner, and declared him responsible for the debts of said firm of Successors of Jose Hernaiz as such.

XII.

That said Munsuri was and is the owner in the said city of San Juan of three pieces of urban property (valuable business houses) of the value as estimated by solicitors for said Munsuri, and upon information and belief, of $50,000, with a balance of mortgage thereon to the Colonial Bank of San Juan of $20,000; that said buildings were and are all rented for business purposes and that without service upon said Munsuri, or notice to him of any
63 character or kind, the said property was seized and the rents therefor sequestrated and for a long period of time the said creditor, Heller & Long, and the alleged creditors hereinafter mentioned, have been and now are collecting the rents from said property without sufficient bond or liability of any kind on their part to return the same to said Munsuri or to account for the same at all, except the personal liability of whosoever may have the matter in charge, the bond of the Trustee herein being for but $2,500, and the amount thus bonded not being more than sufficient to cover the rentals of said property now paid in; and that said collections now amount to more than $2,000.

XIII.

That the solicitors for said Munsuri, believing that said seizure of property was unlawful and beyond the jurisdiction of this Honorable Court, filed a motion as hereinbefore set forth to set aside and vacate all of said orders heretofore made under which the private property of said Julian Munsuri was seized and rents sequestrated as aforesaid, and as the same is still under advisement by this Honorable Court, these facts are respectfully submitted for the information of the Court and as showing the extraordinary condition in which the proceedings in this action now are, and the entire question has reached; and in this connection Your Honor is advised that with the exception of Heller & Long, every creditor appearing in the list submitted in the voluntary proceedings and admitted by the

Referee, with the exception of Heller & Long, receipted in full for their claims prior to December 3, 1903, which receipts are herewith submitted to this Honorable Court; and also whether said creditors are entitled to further consideration whatsoever at the hand of this Honorable Court, or said Julian Munsuri, who, in good faith, has long since settled the claims of said creditors.

64 XIV.

It is further submitted to your Honor that the testimony upon which this Honorable Court acted in making the order of seizure of the property of said Julian Munsuri is based upon statements made from a selection of letters in the Spanish language without translating the same, as required by law, and the testimony of an American bookkeeper with reference to Spanish books without translations of the same, or even without a showing that said bookkeeper was sufficiently advised as to the Spanish language or methods in the keeping of books and records, to testify as to the accuracy of the contents, methods or purposes which said books recite, against all of which solicitors for said Julian Munsuri most respectfully protest.

Whereupon, said Julian Munsuri by his solicitors as aforesaid renew their motion already submitted for the vacation of all orders of every character and kind affecting the private property of said Julian Munsuri or interfering with his control thereof; and further that whosoever may be in possession of the rents collected from the property of said Julian Munsuri by said seizure be directed to forthwith return the same into the Register of this Court, or to the lawful representative of said Julian Munsuri, or to his solicitors, and in conclusion again submit that said Julian Munsuri is now absent and has not submitted nor been subjected to the jurisdiction of this Court since the commencement of the proceedings herein, and that the seizure of his property and the collections of the rents and the withholding of the money therefor, is without due process of law, and that the orders in the premises are void because this Honorable Court is without jurisdiction in the premises.

SWEET, ROSSY & CAMPILLO,
Solicitors for Julian Munsuri.

65 UNITED STATES OF AMERICA,
District of Porto Rico, ss:

Willis Sweet, being first duly sworn, says: I am one of the solicitors for Julian Munsuri, in whose behalf the foregoing supplemental motion is made; I have read the facts therein, nearly all of which are matters of record in this Honorable Court, and the statements therein, which are based upon question of law, and I state that the facts therein set forth are true, and that as to the rights of said Munsuri under the law I believe this motion to be justified upon the facts and law. I make this verification because I am better informed as to the facts and the law therein than any representative of said Julian Munsuri in Porto Rico, and I further state that there is no other representative of said Julian Munsuri authorized to make this affidavit who is in possession of said facts.

WILLIS SWEET.

Subscribed and sworn to before me, this 1st day of June, 1908.

JOHN L. GAY,
Clerk U. S. Dist. Court for P. R.

Service accepted by copy this 1st day of June, 1908.

WM. H. HAWKINS,
Attorney for Creditors.

66 *Exhibit to Foregoing Motion.*

In the United States District Court for Porto Rico.

In Bankruptcy.

In the Matter of SUCESORES DE JOSÉ HERNAIZ Y CA., Bankrupts.

Now comes Sucesores de José Hernaiz, by their attorney N. B. K. Pettingill, and in obedience to the order of the court herein made file the following true and correct list of their creditors, with the amount due to each:

1. Heirs of Vicente Juan de Palma, Mallorca, Spain.	$297.00	Now assigned to and owned by Julian Munsuri.
2. Jaffe & Sons, Manchester, Eng.....	19.34	Ditto
3. Stavert, Sigomala & Co., " "	9,606.41	Ditto
4. A. & S. Henry & Co., " "	12,542.75	Ditto
5. Schill, Seebohm & Co., " "	2,105.23	Ditto
6. Azemard & Leonard, Paris, France.....	2,163.62	Ditto
7. Ysidro Gassol & Son, Barcelona.....	3,780.11	Ditto
8. S. E. Heymann & Co., New York.....	922.54	Ditto
9 Graçiano Mestre, Utuado, P. R.....	66.64	Ditto
10. José Llona, Arecibo, P. R.....	99.40	Ditto
11. Ramon Fernandez, Ciales, P. R	51.38	Ditto
12. Smith, Hogg & Co., New York.....	68.63	Ditto
13. Bernheimer & Walter, " "	3,295.56	Ditto
14. Garner & Co., " "	1,624.10	Ditto
15. Sweetser, Pembroke & Co., "	3,401.40	Ditto
16. Sherman, Reid & Co., "	723.28	Ditto
17. American Trading Co., "	1,606.00	Ditto
18. Tefft, Weller & Co., "	14,174.27	Ditto
19. Everett, Heaney & Co., "	1,746.91	Ditto
20. José M. Peña, San Juan, P. R.....	15.00	Ditto
21. Sucrs. de Castañer, Yauco, P. R.....	21.76	Ditto
22. Francisco Cadierno, Arecibo, "	233.57	Ditto
23. Julian Munsuri, San Juan, P. R.....	16,819.86	For money loaned.
24. Banco Español de P. R., " "	5,147.00	
25. Manuel Aguilar, Cadiz, Vejez, Spain.....	1,240.88	
26. Heller & Long, New York.....	1,293.37	
27. Grinnels, Wills & Co., "	2,326.71	
28. Ed Maurer, "	4,073.67	
29. Dumarest & Co., "	2.65	
30. Miguel Arsuaga, Barceloneta, P. R.....	429.23	
Total.....	$89,898.47	

N. B. K. PETTINGILL,
Attorney for Def'ts.

UNITED STATES OF AMERICA,
District of Porto Rico:

José Trueba y Munsuri, being duly sworn, says that the foregoing is a true, complete, and correct list of the debts of said firm of Sucesores de José Hernaiz.

J. TRUEBA.

67 Power No. 303.—In the city of Bilbao, the 19th day of April, 1906, before me attorney Ildefonso de Urizar, Notary of the college of Notaries of Burgos, residing in this capital, and the witnesses to be hereinafter mentioned, appeared:—Don Julian Munsuri y Hernaiz, of age, married, property holder and domiciled in this city, where by the collector Don Antonio Fernandez Comenzana he was issued on the 11th of April of the last year a cedule (certificate of Personal tax) of the 4th class, stub No. 96. And having in my opinion the necessary legal capacity (which he claims is not limited) to draw this deed conferring power of attorney, says: that he confers special power, ample and sufficient as by law might be required, in favor of Don Wenceslao Bosch, attorney at law at the Capital San Juan, Island of Porto Rico, to represent him and intervene in the action started in the Courts and Tribunals of San Juan, Porto Rico, against the grantor by Mr. Meawet, merchant, who resides in New York, U. S. and in the proceedings that may be brought about as a result of making effective of a document or writing that the grantor of this power holds as against the partnership in liquidation entitled "Sucesores de José Hernaiz," domiciled in the city of San Juan, offering acts of conciliations, with or without her consent, starting actions, demurring to them, or following all their incidents up to their termination, whether they be suits at law, criminal actions, or claims of any kind, rectifying them, offering proofs in evidence, filing motions, taking appeals or availing of any other recourse permissible at law, desisting or abandoning those which may have been utilized, and affecting any other act which may be necessary or advantageous to the better defense of the grantor's right; authorizing him as well to the end that should he be adjudicated any property in payment of his claim against the partnership in liquidation entitled "Sucesores of Herniaz," he may accept them and have the same registered in his name in the Register of Property, giving therefor the necessary public or private docu-
68 ments, and doing all the other acts that to that end may be necessary and advisable. And thus it has been conferred in the presence of the witnesses Don Ildefonso Garcia and Don Quirino Ruiz, of this city. All of the parties present being informed of their right to read by themselves this deed, I proceeded by their consent to read it to them, the contents thereof being ratified by the grantor of said power, who signs together with the witnesses; and I the Notary certify as to my knowledge of the grantor of this power and as to the authenticity of its contents. Signed Julian de Munsuri. Ildefonso Garcia. Quirino Ruiz. Ildefonso de Urizar.

(Note by the Clerk.—The foregoing power of Attorney is referred to in "Claim of Julian Munsuri" filed by Referee April 8, 1907, as "the accompanying power of attorney No. 303." J. L. G., Clerk.)

69 In the United States District Court for Porto Rico.

In the Matter of SUCCESSORS OF JOSE HERNIAZ, Bankrupt.

This cause has been pending in bankruptcy since September 26th, 1906. For reasons that appeared to us sufficient in the premises, on October 25th, 1907, we filed an opinion reversing the Referee's holding in that regard and reinstating a restraining order against one of the bankrupts and holding the latter, one Julian Munsuri to be a general, instead of a special or limited partner in the business. On March 22nd, 1908, or more than four months thereafter, the said Munsuri appeared by Messrs. Sweet, Rossy & Campillo, and moved specially that all orders with reference to the individual property of the said Munsuri be vacated and set aside on the ground that the Court was without jurisdiction in the premises.

This motion was supplemented with an exhaustive and able written argument and brief on the subject, to which a supplemental brief was thereafter added, and which was all replied to by counsel for the creditors in an equally elaborate written argument and brief filed on March 30th, 1908. Still later, on June 1st, 1908, counsel for Munsuri filed an additional motion to dismiss, setting out that this same partnership concern of Successors of Jose Herniaz had had proceedings in involuntary bankruptcy directed against them
70 in this Court in June 1903, and setting out that said Julian Munsuri had secured the withdrawal or dismissal of said proceedings by the payment or at least by securing the assignment to himself of practically all of the debts which the said partnership owed. On said same date and supplemental to this latter motion, counsel for Munsuri also filed a motion that counsel for the creditors be required to show by what authority he represents any creditor in the premises.

Under the main motion first filed as aforesaid by counsel for Munsuri, it is contended that this Court never has had any jurisdiction of said Munsuri because he is a non-resident and no personal service of any kind was had upon him. It is further contended that he was and is under the Porto Rican law a mere limited or special partner and that his private property cannot be taken to pay the debts of the bankrupt concern.

We have given the matter quite careful consideration, and we see no reason to change the views expressed in our opinion of October 25th, 1907 aforesaid. We still think, for the reasons set out in that opinion, which it is not necessary here to repeat, that this Court had full jurisdiction of the said Munsuri, and further that we were right when we held in and by that opinion that Munsuri was under the laws of Porto Rico a general partner in the business of

the bankrupt concern, made so as to creditors by reason of his action concerning the business of the alleged limited partnership.

The other question raised by counsel for Munsuri as to whether or not a court of bankruptcy after a firm or partnership alone has been adjudicated a bankrupt, can draw to itself the individual property of the whole or either of the individual partners and administer it in the same bankruptcy proceeding is a decidedly
71 more serious question.

We have been cited to the case of In re Berthenshaw, 157 Fed. 365, which was decided November 19, 1907, in the U. S. Circuit Court of Appeals, for the eighth circuit, before Judges Sanborn, Hook and Philips. Judges Sanborn and Philips joined in the majority opinion, holding as contended for here by counsel for Munsuri, that a court of Bankruptcy under the bankruptcy act of Congress of 1898, cannot administer upon the individual estate of a member of a bankrupt partnership when such partner has not been individually adjudicated a bankrupt and holding that the trustee must bring an original proceeding against such individual partner. Judge Hook dissents vigorously. The two opinions show that the question under the present Bankruptcy Act is in a ve unsettled condition. We will not quote from either opinion, as t can be consulted by any one interested, but we have given as careful consideration to the two sides of the proposition as we are capable of, and feel constrained to agree with Judge Hook. To our mind he gives much better reasons for holding that a Court of Bankruptcy under our present Bankruptcy Law can, at least by requiring the individual partners not adjudicated bankrupts to file a schedule of their individual property with the trustee, administer upon the same to the extent required, and that is the procedure that has taken place here.

We therefore feel constrained to hold and do hold as before, that the Court has complete jurisdiction in the premises. That Julian Munsuri is a general and not a limited partner in the bankrupt concern having made himself so as to creditors by his own acts, and that he must file a schedule of his individual property with
72 the Referee as heretofore ordered if he has not yet done so.

As to the other motion, that counsel for the creditors should file proof of his authority for appearing at all for any of them, or satisfy the Court that he has such authority; we think under all the circumstances, on the showing made as to Munsuri having procured an assignment of nearly all of the debts, that this request is reasonable. Therefore W. H. Hawkins, Esq., counsel for the creditors is required to file such evidence of his authority in the premises within five days from this date.

The question as to whether or not most or any of the debts of this bankrupt concern have heretofore been paid by Munsuri is held in abeyance and no opinion is expressed in that behalf at this time. Let proper orders be entered to carry out the views here expressed.

B. S. RODEY, *Judge.*

Filed July 14, 1908.

73 In the United States District Court for Porto Rico.

In re SUCCESSORS DE JOSÉ HERNAIZ & Co. In Bankruptcy.

Before Honorable Andres Crosas, Referee in Bankruptcy.

Petition of Julian Munsuri.

To the Honorable the Referee in the above entitled matter:

Now comes Julian Munsuri, by his attorney, Willis Sweet, appearing specially for the purposes herein set forth, and for no other purpose, and shows as follows:

I.

That at the times hereinafter mentioned, your petitioner claims to have been a special partner of the said firm of Successors of Jose Hernaiz & Co., now bankrupt, but that as the result of a hearing had in the premises, the Honorable District Court of the United States for Porto Rico, in an opinion handed down on the 14th day of July, 1908, held the petitioner to be a general partner in said firm, and that said Court also held that petitioner, and the private property of petitioner, is subject to the debts and liabilities of said bankrupt firm.

II.

Petitioner shows that at the hearing last referred to, the question of the former settlement and adjudication of all of the claims, or alleged claims, now pending against said bankrupt firm, except the claims of Heller & Long, was by said Honorable District Court reserved, the Honorable Judge, at the time of handing down said opinion expressing a preference for first having said question
74 of settlement and adjudication passed upon by said Honorable Referee, and then having said question certified by said Referee at the instance of whomsoever might feel aggrieved by his decision. And thereupon your petitioner further shows:

III.

That on the 13th day of June, 1903, the mercantile firms of Sweetser, Pembroke & Co., Sherman, Reid & Co., and The American Trading Co., filed a petition in involuntary bankruptcy against the said firm of Successors of Jose Hernaiz & Company and its individual members, which petition was granted as to the bankruptcy of said firm, but denied as to the bankruptcy of the individual members thereof, although said petition in bankruptcy was resisted by the members of said firm.

IV.

That in the years 1902-3, the said firm Successors de José Hernaiz & Co. were seriously involved in their business, and your petitioner, always regarding himself a special or limited partner in said

firm, borrowed from the Colonial Bank of San Juan, Porto Rico, the sum of $40,000, which amount he loaned to said firm, with the belief that the amount stated would be sufficient to carry said firm through its temporary embarrassments, and enable it to save itself altogether; but that notwithstanding this advance, secured by the personal property, that is to say, the private property, of your petitioner, the said bankruptcy proceedings stated in the foregoing paragraph, followed.

V.

Your petitioner further shows that he had at that time been in the mercantile business in Porto Rico many years, and that at the time of said bankruptcy, he had, after the custom of Spanish mer-
75 chants in the colonies of Spain, retired from the active management of the business of said firm, becoming a limited partner therein, and as he supposed and intended, subject to the laws and responsibilities of a special partnership under the Commercial Code of Porto Rico; and your petitioner further shows that during his long business career, he had accumulated valuable property, and that at the time said firm was declared bankrupt, and at the time said properties were seized and the rents thereof sequestrated, he was the owner of Nos. 4 and 17, Cruz St., and No. 32 San Francisco St., all in San Juan, Porto Rico, and now of the value of between $50,000 and $60,000, but subject to the mortgage before referred to, whereof the sum of about $20,000 remains due and payable to said Colonial Bank.

VI.

Your petitioner further shows that when said firm was adjudged bankrupt as aforesaid in the year 1903, and it became evident that the assets of said firm would not satisfy the demands made against it, he decided to make if possible a settlement of said indebtedness, out of his private estate, applying as far as they would go the firm assets in returning to him the funds advanced for the purpose of said settlement. Those assets were filed, and all creditors were advised as to their extent, while of course their value was a matter of judgment or opinion.

VII.

The liabilities of the firm amounted at that time, all told, to the sum of $72,978.88, besides the sum of $11,719.11, still due your petitioner on account of the $40,000 loan already mentioned.
76 And thereupon your petitioner began negotiations for the settlement of said liabilities, and did settle the same, all as will appear by the receipts given in the settlement of said accounts. The said receipts are attached, eleven in number, and attached hereto, and marked "Petitioner's Exhibit A." In this manner your petitioner proceeded to settle said accounts, and did settle and adjust the same, including all creditors, except the small claims of Edward Maurer and Heller & Long, both claims amounting in all to the sum of $5,366.37; but the said claim of Maurer being in

litigation before the Insular Courts, is not involved in the matter at bar.

VIII.

Thus all claims were settled by your petitioner, except the two claims of Maurer and Heller & Long aforesaid, and thereupon, in the year 1904, your petitioner, having settled all claims against the bankrupt estate, (except the two aforesaid), departed for the Kingdom of Spain, of which kingdom he is a native and subject, and has since resided therein, at the same time leaving at his departure the said property situated in San Juan, and already in this petition described.

IX.

Your petitioner further says that after his departure for Spain, the said Edward Maurer began an action in the District Court of Porto Rico for the District of San Juan, and that litigation was continued for a long period of time, and various attachments were issued, the said litigation being so annoying to the general partner of said firm of Successors of Jose Hernaiz & Co., that he, the said general partner, asked the consent of your petitioner to file a voluntary petition in bankruptcy, thus ending said litigation, with its train of expense and constant annoyance; and your petitioner con-
77 sented therto, because said Maurer and said Heller & Long had refused to make any compromise with your petitioner, and your petitioner believed that said proceeding in bankruptcy would be the best and most desirable manner of ending vexatious litigation and definitely closing out the affairs of said bankrupt firm, including the indebtedness to your petitioner.

X.

Accordingly, Jose Trueba, the managing partner of said firm, filed a voluntary petition in bankruptcy on the 26th day of September, 1906. Thereupon, the usual proceedings in bankruptcy followed; and Wenceslao Bosch, a Spanish Lawyer, and Attorney in fact for your petitioner, presented to the Referee the claim of your petitioner for the balance due as aforesaid, and William H. Hawkins, Esq., an attorney of said Court, appeared as the attorney for Heller and Long and presented their claim for $1,293. A trustee was appointed, and then Mr. Hawkins, always having his appearance specified as being for Heller & Long, proceeded with a long examination of said Trueba and other witnesses. Little attention was paid to said examination, and from the record of the same there is nothing to indicate that a cancellation of the settlement theretofore made by Julian Munsuri with various creditors was even in contemplation; but on the contrary, there was nothing to indicate what afterwards appears to have been all the time the purpose of counsel for Heller & Long, to wit: To again make claim for all of the debts settled by Munsuri as hereinbefore set forth; and thereupon certain claims against the said bankrupt firm, were presented as follows:

78 *List of Creditors.*

Julian Munsuri	San Juan, P. R.	Loan	$11,719.00
A. & S. Henry & Co.	Manchester, England	Merchandise.	£1,873-13-9
S. E. Heyman & Co.	2 Stone St., N. Y.	"	691.42
Tefft, Weller & Co.	326 B'dway, N. Y.	"	10,559.30
Sherman, Reid & Co (Sherman & Sons Co)	64 Leonard St., N. Y.	"	542.46
Bernheimer & Walter	120 Franklin St., N. Y.	"	2,473.36
Garner & Co.	2-16 Worth St., N. Y.	"	1,218.08
Sweetser, Pembroke & Co.	25 Broad St., N. Y.	"	1,700.70
Everett, Heaney & Co.	353-355 Canal St., N. Y.	"	1,304.12
Grinnell, Willis & Co.	44-46 Leonard St., N. Y.	"	1,776.37
Heller & Long.	73-80 Worth St., N. Y.	"	1,293.65
Schill, Seebohm & Co.	Manchester, England	"	£396-9-0

Filed with Referee Oct. 10, 1907.
" by " with Clerk Oct. 12, 1907.

All of said claims, except that of Heller & Long, so presented, having been settled by Julian Munsuri in 1903, transferred to him, receipted in full, and by him transferred to said firm Successors of Jose Hernaiz & Co.

XI.

Thereupon, immediately following said examination, the said attorney for Heller & Long presented said claims above recited, and without service upon Julian Munsuri, personal, or substitute, or at all, said Hawkins asked for an injunction prohibiting the said Munsuri, who was in Spain, or his agents, from disposing of his property, and requiring his said agents to pay all rents received from said property to the Referee in Bankruptcy, which order of injunction, sequestration and seizure of property was granted by said Referee, without any notice of any kind to said Julian Mun-
79 suri as aforesaid, although all of said rents and property were the private rents and property of said Julian Munsuri.

XII.

Your petitioner further shows that as soon as he was advised of what had been done in the premises, he employed the firm of Sweet, Rossy & Campillo, the said Sweet being the Willis Sweet who presents this petition, and the said Julian Munsuri being advised by said firm that in their opinion the said Referee was without jurisdiction to make any order whatsoever touching the personal property of said Julian Munsuri, a motion was presented to said Referee by the terms of which it was moved that all of said orders affecting the private property of said Munsuri, and which had been made without service upon or notice to said Munsuri of any kind, be vacated and the said Referee granted said motion; but afterwards the said attorney for said Heller & Lang and other alleged creditors, caused the said order of said Referee to be certified to the said Honorable District Court, which Court reversed the order of said Referee and reinstated all of the said orders that had by said Referee been vacated. And thereafter, as soon as the authority of said Julian Munsuri could be obtained so to do, counsel in his behalf appeared in the said

Honorable District Court and the said Court granted a hearing upon a motion made by special appearance to vacate the order of said Court affirming jurisdiction over the person or private property of said Julian Munsuri; and the said District Court did on the said 14th day of July, 1908, hand down its opinion aforesaid, affirming its jurisdiction in the premises over the said private property of said Munsuri.

XIII.

Your petitioner further shows that in the last mentioned motion considered by said Honorable District Court, the attention of
80 said Honorable Court was called to the fact that said Munsuri held the receipts in full, of all of said creditors except Heller & Long, and offered to exhibit the same with a view of ending said litigation at that time and place, but the said Honorable Court, not accepting the views of Counsel as to jurisdiction, the question of a former settlement remained to be considered, which question the said Honorable Court reserved as aforesaid, and indicated its desire, orally, that the Honorable Referee should pass upon the same, even though formally, and that the party feeling aggrieved thereby, should cause the findings of said Referee to be certified to said Honorable Court for review.

XIV.

Your petitioner shows that of the thirty creditors who filed their claims against said bankrupt firm in 1903 as aforesaid the said Julian Munsuri settled with all of said creditors here represented except Heller & Long and he herewith attaches to this petition the complete list of creditors as shown in the bankruptcy proceeding in 1903 which list of creditors with the memorandum of the assignment of their claims to Julian Munsuri is hereto attached and marked "Petitioner's exhibit B," and it will be seen that of the thirty in the said list of creditors represented but eleven have presented claims to this Honorable Referee and as to the said eleven alleged creditors, with the exception of the said Heller & Long, your petitioner here and now exhibits their receipts, showing that their respective claims were in December 1903, settled in full, and the record of said settlement was filed in the United States District Court for Porto Rico in said bankruptcy proceeding on the 7th day of December, 1903, the said list of creditors, with note of said
81 assignment being hereto attached, and marked Petitioner's exhibit "B."

XV.

Your petitioner further shows that said settlement has remained in the files of said Court since the time stated, as appears from the record in said Court, and that the same was in the files of said Court on the 28th day of March, 1904, at which time said action was by the said Honorable District Court for Porto Rico, William H. Holt, presiding, and who had made all of the orders in said cause, duly dismissed, the said order dismissing said cause being hereto attached

and marked Petitioner's exhibit "D"; and your petitioner further shows that since said settlement, no action has been brought nor is any action now pending to cancel, vacate or set aside the said receipts, and your petitioner avers that the same appear to be in full force and effect.

XVI.

Your petitioner further shows that said settlement was made by duly authorized parties representing all concerned, and in absolute good faith, and that all records and facts now presented to this Referee were in existence at the time said settlement was had, and were accessible to all parties interested, and that nothing has occurred or developed since said settlement, or any fact discovered which was not in the possession of or available to all of the parties interested at the time said settlement was effected.

XVII.

Your petitioner respectfully submits that the parties now seeking to avoid said settlement are too late in attempting the same and that your petitioner is advised and believes that he may invoke the principle of laches to stop further annoyance, expense and litigation with reference to said accounts, as well as the former settlement of
82 said claims.

XVIII.

Your petitioner submits that said claims remain adjudicated under the action of dismissal by said Court, and that all claims receipted, have been and are finally settled, and that said order of dismissal was the final legal adjudication of the same; and that especially is this true in the absence of any charge of fraud, deceit, or cheating by which said settlement was carried into effect.

Wherefore, petitioner prays that the orders heretofore made allowing said claims be reconsidered, vacated and set aside, and that said claims be disallowed. That is to say, that the order allowing the claims of A. & S. Henry & Co., Sweetser, Pembroke & Co., S. E. Heyman & Co., Tefft, Weller & Co., Sherman, Reid & Co. (Sherman & Sons Co.), Bernheimer & Walter, Garner & Co., Grinnell, Willis & Co., Everett, Heaney & Co. and Schill, Seebohm & Co., be reconsidered, vacated and set aside, and that the same be not allowed, because they have been settled.

Dated, San Juan, July 29, 1908.

JULIAN MUNSURI,
By WILLIS SWEET,
His Attorney.

UNITED STATES OF AMERICA,
District of Porto Rico, ss:

Willis Sweet, being first duly sworn says:

I am the attorney for Julian Munsuri in the above entitled matter have drawn the foregoing petition and know the contents thereof and I believe the same to be true; the information upon which I

base my belief is obtained from the records of the above entitled Court, and the records, orders, testimony and proceedings in said Court or before the Referee in bankruptcy in the matter of Successors of Jose Hernaiz & Co. in Bankruptcy.

WILLIS SWEET.

Subscribed and sworn to before me this 29th day of July, 1908.

ANDRES B. CROSAS,
Referee in Bankruptcy.

83 United States District Court for Porto Rico.

No. 11.

In the Matter of SUCESORES DE JOSÉ HERNAIZ et al., Bankrupts.

To the Honorable William H. Holt, Judge of the United States District Court for Porto Rico:

The petition of Sweetser, Pembroke & Company, a Corporation organized and acting under the laws of the State of New York and doing business in said State; Sherman, Reid & Company, a mercantile company residing in and doing business in the said City and State of New York and composed of the following named partners: John T. Sherman, Aaron L. Reid and Charles A. Sherman; and the American Trading Company, a corporation organized and doing business under the laws of the State of Maine, U. S. A. and doing business in the said City and State of New York, respectfully shows:—

That the mercantile firm of Sucesores de José Hernaiz, composed of the following partners, to wit: Julian Munsuri y Hernaiz and José Trueba y Munsuri, has for the greater portion of the six months next preceding the date of the filing of this petition had its principal place of business in the City of San Juan, in the Island of Porto Rico, in the district aforesaid, and owes debts to the amount of over one thousand dollars.

That the said partners composing the said firm of Sucesores de José Hernaiz have for the greater part of the six months next preceding the filing of this petition resided in and had their principal place of business in the said City of San Juan, Porto Rico, and district aforesaid.

That your petitioners are creditors of the said firm of Sucesores de José Hernaiz, having provable claims against the said firm amounting in the aggregate, in excess of securities held by them, to the sum of Five thousand seven hundred and thirty one dollars and
84 fifty nine cents. That the nature of the said claims and the amounts thereof are as follows:—

(1) The said Sweetser, Pembroke & Company, the sum of Three thousand four hundred and one dollars and forty cents, for goods, wares and merchandise sold and delivered by them to the said firm of Sucesores de José Hernaiz prior to March 1st, 1903;

(2) The said Sherman, Reid & Company, the sum of seven hundred and twenty three dollars and twenty eight cents, for goods, wares and merchandise sold and delivered by them to the said firm of Sucesores de José Hernaiz prior to the said March 1st, 1903; and

(3) The said American Trading Company, the sum of One thousand six hundred and six dollars and ninety one cents, for goods, wares and merchandise sold and delivered by them to the said firm of Sucesores de José Hernaiz prior to the said March 1st, 1903.

And your petitioners further represent that the said firm of Sucesores de José Hernaiz and the said Julian Munsuri y Hernaiz and José Trueba y Munsuri, the individual members of the said firm, are insolvent and that within the four months next preceding the date of this petition the said firm and the said individual members thereof committed an act of bankruptcy in that it and they did heretofore, to wit:—on March 7th, 1903, execute a conveyance of the property of the said firm with the intent to prefer the said Julian Munsuri y Hernaiz over the bona fide creditors of the said firm. Petitioners represent that the said Julian Munsuri y Hernaiz and José Trueba y Munsuri are general partners of the said firm of Sucesores de José Hernaiz, but that on the said March 7th, 1903, the said Julian Munsuri y Hernaiz pretending to be a creditor of the said firm of Sucesores de José Hernaiz and acting together with the said José Trueba y Munsuri, claiming to act as the managing partner of the said firm, did execute a conveyance to the said Julian Munsuri y Hernaiz by the said firm of all goods, wares and merchandise and other property of the said firm of Sucesores de José Hernaiz in three several and separate stores of the said firm in the City of San
85 Juan, Porto Rico, aforesaid, said three stores being those known by the names of "Capital de Vizcaya," "Puerto-riqueña" and "La Primavera" situated, respectively, at Nos. 7 and 10 Cruz Street, fronting on San Francisco Street, and No. 32 San Francisco Street, all in said City of San Juan, said conveyance having, as aforesaid, been executed on the 7th day of March, 1903 and before Juan Guzman Benitez, Notary Public at San Juan. Petitioners represent that at the date of the said conveyance the said firm and the said partners were insolvent and that the same was made with the intention of preferring the said Julian Munsuri y Hernaiz over the other creditors of the said firm among whom are these petitioners.

Wherefore your petitioners pray that service of this petition and with a subpœna, may be made upon the said firm of Sucesores de José Hernaiz and upon the said Julian Munsuri y Hernaiz and José Trueba y Munsuri, as provided in the Acts of Congress relating to bankruptcy and that the said firm and the said partners individually may be adjudged by the Court to be bankrupts within the purview of the law and of the said Acts.

SWEETZER, PEMBROKE & CO.,
By DEXTER & HORD;
SHERMAN, REID & CO.,
By DEXTER & HORD;
AMERICAN TRADING CO.,
By JAIME ANNEXY,

Petitioners.

DEXTER & HORD, Att[illegible]

Henry F. Hord, being duly sworn, on his oath says:--That he is a member of the law firm of Dexter & Hord, residing and doing business in the City of San Juan, Porto Rico, within the district of this court; that the said firm of Dexter & Hord hold power of attorney from the said creditors Sweetzer, Pembroke & Company and Sherman, Reid & Company, dated May 8th, 1903, authorizing and empowering the said firm of Dexter & Hord, or either of the members thereof, to execute and file all necessary petitions in bank-
86 ruptcy and especially this petition and to do and perform in connection therewith all such things necessary to the filing of the same and the institution of this proceeding in bankruptcy; that the said firms of Sweetser, Pembroke & Company and Sherman, Reid & Company are non-residents of the District of Porto Rico and have no other agent within the said district except the said firm of Dexter & Hord; that the statements contained in the foregoing petition subscribed by the said Sweetser, Pembroke & Company and Sherman, Reid & Company, by the said Dexter & Hord, are true.

HENRY F. HORD.

Subscribed and sworn to before me this the 8th day of May, 1903.

RICARDO NADAL,
Clerk of the United States District Court.
By H. H. SCOVILLE, *Deputy.*

Jaime Annexy, being duly sworn, on his oath says:—that the firm of American Trading Company, of New York, U. S. A., are non-residents of the District of Porto Rico, and have not within the said District for the purposes of this petition, any other agents besides himself; that he hold- the power of attorney of the said American Trading Company, dated May 20th, 1903, to sign the foregoing petition and to do all things else in connection therewith necessary to the validity thereof and the institution of this proceeding; that the statements contained in the foregoing petition subscribed by the said American Trading Company, by him as their agent aforesaid, are true.

JAIME ANNEXY.

Subscribed and sworn to before me this the 8th day of June, 1903.

RICARDO NADAL,
Clerk U. S. Dist. Ct.
By H. H. SCOVILLE, *Deputy.*

Filed June 8, 1903.

87 *Marshal's Return on Service and Copy of Petition.*

UNITED STATES OF AMERICA,
The District of Porto Rico, ss:

I hereby certify and return that I served the annexed petition on the therein-named Sucesores de José Hernaiz by handing a copy to

Julian Munsuri y Hernaiz, a member of said firm, and by handing a copy to Julian Munsuri y Hernaiz and José Trueba y Munsuri, each, personal-, at San Juan in said District on the 11th day of June. A. D. 1903.

E. S. WILSON,
U. S. Marshal.

88 In the District Court of the United States for Porto Rico, Sitting at San Juan.

In Bankruptcy. No. 11.

SWEETSER, PEMBROKE & Co. et al.
vs.
SUCESORES DE JOSÉ HERNAIZ.

Amended Affidavit to Petition in Bankruptcy.

Henry F. Hord being duly sworn upon his oath, says that he is a member of the firm of Dexter & Hord, a society of attorneys practicing in the city of San Juan, Porto Rico, composed of the said Henry F. Hord and Francis H. Dexter, and that the said Dexter & Hord are members of the bar of the United States District Court for Porto Rico, regularly practicing therein; that the said firm, Dexter & Hord, and each of the partners thereof, were duly and fully authorized by Sweetser Pembroke & Co. and by Sherman Reid & Co. to sign the petition in bankruptcy herein filed by the said Sweetser Pembroke & Co. and Sherman Reid & Co. and the American Trading Company against the Sucesores de José Hernaiz, on the 8th day of June, 1903; that the said Sweetser Pembroke & Co. and Sherman Reid & Co. are mercantile associations and firms engaged in business in the city of New York, neither of whom have any representatives in Porto Rico nor did they have at the time of the filing of the said petition in bankruptcy as aforesaid; that neither the said Sweetser Pembroke & Co. nor the said Sherman Reid & Co. nor the partners thereof in the said city of New York were aware of the acts of bankruptcy alleged in the said petition to have been
89 committed by the said Sucesores de José Hernaiz at the time of the filing of the said petition but that your affiant had knowledge thereof, having acquired such knowledge with- a few days previous to the filing of the said petition in bankruptcy, and the affiant alleges that he acquired knowledge of the said act of bankruptcy by reading a certified copy of the transfer set forth in the said petition in bankruptcy, dated March 7, 1903, and that the reason why he signed and verified the said petition in bankruptcy in behalf and for the said Sweetser Pembroke & Co. and Sherman Reid & Co. is and was because he was familiar with the facts as aforesaid and it would greatly delay the filing of the petition in bankruptcy if time had been taken to send the petition in bankruptcy to New York for the signature of a member of the firm of the said Sweetser Pembroke &

Co. and the said Sherman Reid & Co., or to have awaited the arrival in Porto Rico of a duly authorized person to sign such petition.

Affiant states that all the matters and facts set forth in the said petition in bankruptcy filed as aforesaid set — herein are true. And affiant further says that at the time of the filing of the said petition in bankruptcy Don Jaime Annexy was the regular and general Agent, in Porto Rico, of the American Trading Company of New York and that such Company had no other agent in Porto Rico at the time; that the said Don Jaime Annexy was duly and fully authorized by the said American Trading Company to sign the said petition in bankruptcy and that he signed the same for the reason that the facts relating to the act in bankruptcy as set forth in the said petition was not known to the said American Trading Company but were known to the said Jaime Annexy who acquired the knowledge thereof from a reading of the document or transfer set forth
90 in the said petition in bankruptcy; and that he, the said Jaime Annexy, signed and verified the said petition in bankruptcy for the reason that it would have delayed the proceedings herein to the great prejudice to his client the said American Trading Company if he had waited until the petition of bankruptcy should be sent to New York for signature or if he should wait until an officer of the said Company should come to Porto Rico.

(Sgd.) HENRY F. HORD.

Subscribed and sworn to before me this Twentieth day of October. Nineteen hundred and three.

(Sgd.) H. H. SCOVILLE, *Clerk*.

Filed Oct. 20, 1903.

91 In the United States District Court of Porto Rico.

In Bankruptcy. No. 11.

SWEETSER, PEMBROKE & Co. et al.
vs.
SUCESORES DE JOSÉ HERNAIZ et al.

And now the said José Trueba y Munsuri appears and denies that either he or the alleged firm of Sucesores de José Hernaiz have committed the act of bankruptcy set forth in said petition, or that he or the alleged firm of Sucesores de José Hernaiz are insolvent or were so at the time alleged in said petition; and he further denies that the said Julian Munsuri y Hernaiz is a general partner in said alleged firm of Sucesores de José Hernaiz and avers that he, the said José Trueba y Munsuri, is the sole general proprietor doing business under said firm name of Sucesores de José Hernaiz and the said Julian Munsuri y Hernaiz is only a special partner or comanditario in said firm and under the laws of Porto Rico not responsible for the debts thereof; and he further avers that neither he nor the said al-

leged firm of Sucesores de José Hernaiz should be declared bankrupt for any cause in said petition alleged.

And this he prays may be inquired of by the court.

J. TRUEBA.

Subscribed and sworn to before me this 11th day of November, 1903.

H. H. SCOVILLE, *Clerk*,
By FRANK ANTONSANTI, *D. C.*

Filed Nov. 11, 1903.

92 *Denial of Julian Munsuri.*

(Filed Nov, 11, 1903.)

In Bankruptcy. No. 11.

SWEETSER, PEMBROKE & Co. et al.
vs.
SUCESORES DE JOSE HERNAIZ et al.

And now the said Julian Munsuri y Hernaiz appears and denies that he has committed the act of bankruptcy set forth in said petition, or that he is involved or was so at the time alleged in said petition; and he further denies that he is a general partner of said alleged firm of Sucesores de Jose Hernaiz or that he is responsible for the debts of said firm, and avers that he is only a comanditario or special partner according to the laws of Porto Rico and that said Jose Trueba y Munsuri is the sole general partner doing business under said firm name of Sucesores de Jose Hernaiz. And he further avers that neither he nor the said alleged firm of Sucesores de Jose Hernaiz should be declared bankrupt for any cause in said petition alleged.

JULIAN DE MUNSURI.

Subscribed and sworn to before me this 11th day of November, 1903.

H. H. SCOVILLE, *Clerk*,
By FRANK ANTONSANTI, *D. C.*

Filed Nov. 11/03.

93 In the District Court of the United States for Porto Rico, Sitting at San Juan.

In Bankruptcy. No. 11.

SWEETSER, PEMBROKE & Co.
against
SUCESORES DE JOSÉ HERNAIZ & Co.

Motion of Bernheimer & Walter, Garner & Company, and Heller & Long to be Admitted as Petitioning Creditors in the Above-entitled Cause.

Now come Bernheimer & Walter, Garner & Company and Heller & Long, partnerships doing business in the City of New York at the present time and at all of the times referred to in the original petition for involuntary bankruptcy presented herein by Sweetser Pembroke & Company and others against Sucesores de José Hernaiz & Company, on the — day of June, Nineteen hundred and three

Your petitioners Bernheimer & Walter represent that the said Sucesores de José Hernaiz & Company, upon the date of the filing of the said original petition herein, were indebted to them in the sum of Three thousand two hundred and ninety seven dollars and eighty one cents ($3297.81) for goods sold and delivered by the said firm of Bernheimer & Walter to the said Sucesores de José Hernaiz & Company, prior to the filing of the said original petition herein.

And your petitioners Garner & Company represent to the Court that at and before the filing of the said original petition herein the said mercantile firm of Sucesores de José Hernaiz & Company were indebted to them in the sum of One thousand six hun-

94 dred and twenty four dollars and ten cents ($1624.10) for goods sold and delivered by your petitioners Garner & Company to the said Sucesores de José Hernaiz & Company before the filing of the original petition herein.

Your petitioners Heller & Long state that at and before the filing of the said petition in bankruptcy herein the said Sucesores de José Hernaiz & Company were indebted to them in the sum of One thousand two hundred and ninety three dollars and sixty five cents ($1293.65), for goods, wares and merchandise before that time sold to the said alleged bankrupts. All of the said accounts, respectively, as above stated as due to each of the above stated petitioners are correct after making of all due offsets and credits.

Your petitioners state that all of the goods, wares and merchandise so sold by them respectively to the said Sucesores de José Hernaiz & Company were purchased by the latter within six months prior to the filing of the said original petition herein. Petitioners represent that the original petitioners were Sweetser Pembroke & Company, Sherman, Reid & Company and the American Trading Company, but that since the filing of said petition a settlement has been made by and between said original petitioners and the alleged bankrupts

Sucesores de José Hernaiz & Company, by reason of which the interests of your present petitioners may be jeopardized for failure of the original petitioners to prosecute their original petition in the said bankruptcy proceedings, for the reason that it is a part of the consideration of said settlement that the said bankruptcy proceedings shall be no further continued or prosecuted by the said original petitioners.

The petitioners herein by and through their Attorney in fact, Henry F. Hord, thereunto duly authorized, verify the allegations and statements contained in the said original petition.

Wherefore, your petitioners Bernheimer & Walter, Garner
95 & Company and Heller & Long pray that the Court will admit them as petitioning creditors to the original petition and that they may carry on these proceedings for their benefit and all other creditors.

BERNHEIMER & WALTER,
GARNER & COMPANY,
HELLER & LONG,
Petitioners.
DEXTER & HORD, *Attorneys.*

Henry F. Hord, being duly sworn upon his oath says that he is an Attorney at Law, practicing in Porto Rico and a member of the Bar of the District Court of the United States for Porto Rico; that he has read the foregoing petition and all the matters and facts therein stated are true, that affiant is duly authorized by Bernheimer & Walter, Garner & Company and Heller & Long to sign the said original petition in bankruptcy in their names and behalf against the Sucesores de José Hernaiz & Company and to perform and to participate in all other proceedings in bankruptcy against the said Sucesores de José Hernaiz & Company.

Affiant states that the act of bankruptcy as set forth in the said original petition herein is within his knowledge from the reading of a copy of the transfer and agreement referred to in the said original petition.

Neither the said Bernheimer & Walter, Garner & Company, Heller & Long, or their partners or officers thereof sign the said original petition or verify the same nor do they sign or verify this petition for the reason that all the partners thereof, respectively, are residents of the City of New York nor have they any other agent in Porto
96 Rico except your affiant and the firm of Attorneys of Dexter & Hord, of which affiant is a member.

HENRY F. HORD.

Subscribed and sworn to before me this Eleventh day of November. Nineteen hundred and three.

H. H. SCOVILLE, *Clerk,*
By FRANK ANTONSANTI, *D. C.*

Filed Nov. 11, 1903.

97 In the District Court of the United States for Porto Rico, Sitting at San Juan.

In Bankruptcy. No. 11.

SWEETSER, PEMBROKE & Co.
against
SUCESORES DE JOSÉ HERNAIZ.

Motion of Tefft, Weller & Co. to be Substituted as Petitioning Creditor.

Now comes Tefft, Weller & Co., a Commercial Firm or partnership, doing business in the city of New York, and presents this their motion to be made and joined as petitioning creditors in the petition heretofore filed to declare Sucesores de José Hernaiz, bankrupts, and they say that all of the facts set forth in the said petition are true and further that your petitioners are creditors of the said firm of Sucesores de José Hernaiz, having provable claims against the said firm amounting, in the aggregate, in excess of securities held by them, to the sum of Fourteen thousand and sixty-five dollars and eighty cents ($14,065.80), which amount was due and owing to your petitioner for goods, wares and merchandise sold and delivered to the said firm of Sucesores de José Hernaiz, prior to March 3rd, 1903.

TEFFT, WELLER & CO.,
Petitioners,
By DEXTER & HORD,
Their Attorneys.

Filed October 20, 1903.

98 Henry F. Hord, being duly sworn upon his oath says that he is a member of the firm of Dexter & Hord doing business in the said city of San Juan, Porto Rico, who are members of the Bar of the District Court of the United States *of* Porto Rico; that at the present time and on and prior to June 10, 1903, they, the said Dexter & Hord, and each of them, were duly authorized by the said firm of Tefft, Weller & Co., to sign any petition in bankruptcy in their name and behalf against Sucesores de José Hernaiz & Co. and to do and participate in all other proceedings in bankruptcy against the said José Hernaiz & Co. Affiant states that the act of bankruptcy as set forth in the said petition herein is within his knowledge from reading a copy of the transfer and agreement set forth in the petition in bankruptcy.

That the said firm of Tefft, Weller & Co. do not sign the said petition or verify the same for the reason that all of the members thereof are residents of the city of New York and have no other agent in the city of San Juan except the said Firm of Dexter & Hord.

HENRY F. HORD.

Subscribed and sworn to before me this Twentieth day of October, Nineteen Hundred and Three.

H. H. SCOVILLE, *Clerk.*

99 In the United States District Court for Porto Rico.

In Bankruptcy. No. 11.

In the Matter of SUCESORES DE JOSÉ HERNAIZ et al., Bankrupts.

Now come the said alleged bankrupts, Sucesores de José Hernaiz, Julian Munsuri y Hernaiz, and José Trueba y Munsuri, by their attorney, N. B. K. Pettingill, appearing specially for this purpose and no other, and moves the court to vacate and set aside the service of process in said cause upon the said respondents and to dismiss the said petition filed against them for the following reasons, to wit:

First, because said writ was issued on the 10th day of June, 1903, and made returnable on the 12th day of June, 1903, which failed to give such reasonable notice as is required to constitute due process of law.

Second, because, although said writ was issued and tested on the 10th day of June, 1903, it was not served on the respondents until late in the afternoon of the 11th day of June, 1903, by reason of which these respondents were given less than twenty-four hours' notice to appear in this court in defence of said petition, which is not such reasonable notice as constitutes due process of law.

Third, because the petition in this cause fails to allege that these respondents are included within the classes of persons against whom involuntary petitions in bankruptcy can be filed under the law, by reason whereof this court is without jurisdiction to proceed against these respondents.

Fourth, because the said petition is not legally or sufficiently verified, in that it is sworn to by one claiming to be an attorney in fact of certain corporation petitioners without the power of attor-
100 ney under which he claims to act being set forth or attached to the said petition so as to enable the court to judge of the sufficiency of the same.

Fifth, because the said petition is not legally or sufficiently verified in that the party verifying the same as an attorney in fact does not set forth in said affidavit to said petition that he has had any opportunity of ascertaining the accuracy of the allegations made in said petition, or has in fact any knowledge thereof, whereby he is enabled to verify the same.

Sixth, because of other matters apparent on the face of said petition.

N. B. K. PETTINGILL,
Attorney for Respondents.

Filed June 15, 1903.

101 United States District Court for Porto Rico, December 3, 1903.

In Bankruptcy. No. 11.

SWEETZER, PEMBROKE et al.
vs.
SUCESORES DE JOSÉ HERNAIZ & Co.

Order.

Under the present Bankrupt Law neither a voluntary nor an involuntary petition can be dismissed by the petitioner or petitioners by consent of parties or for want of prosecution until after notice to the creditors.

Bankrupt Law, Section 59 (G.).
Loveland on Bankruptcy, p. 185.

The defendants, Sucesores de José Hernaiz & Co., are required within ten days to file a sworn schedule of all their creditors, their residences, etc., and within ten days thereafter give twenty days' notice by mail to all of them that do not file a consent thereto, of the proposed dismissal of these proceedings.

WM. H. HOLT, *Judge.*

Filed December 3, 1903.

102 In the United States District Court for Porto Rico.

In Bankruptcy. No. 11.

SWEETSER, PEMBROKE & Co. et al.
vs.
SUCESORES DE JOSÉ HERNAIZ & Co.

An order having been entered herein on the 3rd day of December A. D. 1903, requiring notice of the motion of the petitioning creditors for dismissal of these proceedings to be given by mail to all creditors not filing a written consent thereto and it appearing that the time within which consents were to be filed has elapsed and some creditors have *have* not filed such consent, yet the notice provided for in said order has not been given to such creditors; it is hereby ordered that the clerk of this Court do forthwith issue the notices to creditors as required by said former order.

Done in open court at Ponce this 18th day of January, 1904.

WM. H. HOLT, *Judge.*

Filed Jan. 18, 1904.

103 In the District Court of the United States for Porto Rico.

In the Matter of SUCESORES DE JOSÉ HERNAIZ & COMPANY, Bankrupts.

To the Banco Espanol de Puerto Rico, Ed Maurer, Dumarest and Company and Miguel Arsuaga, Manuel Aguilar, Grinnels Wills and Company:

Notice is hereby given to the above named creditors of the bankrupts herein mentioned that a petition for the dismissal of these proceedings has been made to this court by the majority of the creditors herein, and that twenty days' notice is hereby given you and each of you within which any or all of you may oppose such dismissal or consent thereto.

Witness the Honorable William H. Holt, Judge of the District Court of the United States for Porto Rico, and the seal thereof this twentieth day of January at San Juan, Porto Rico.

Attest:

H. H. SCOVILLE,
Clerk of the Court,
By FRANK ANTONSANTI,
Deputy Clerk.

Copy mailed Jan. 20/-904.
B. Journal, p. 59.

104 *Opposition to Dismissal of Proceedings.*

(Filed February 9, 1904.)

In Bankruptcy. No. 11.

In the Matter of SUCESORES DE JOSÉ HERNAIZ & COMPANY.

And now comes Ed Maurer, by his Attorney Rafael Guillermety, in response to a notice of this honorable court, and respectfully represents that he is a creditor of the above named bankrupts; that the said bankrupts, Sucesores de José Hernaiz & Company, are justly and truly indebted to said deponent in the sum of $4,073.67.

And this deponent further state- that he opposes the discharge of the said bankrupts, as the same are insolvent and can not pay their creditors in full.

And this deponent further state- that the said bankrupts Sucesores de José Hernaiz & Company are disposing of all their property and concealing the same and that unless the same is taken into custody this creditor or any other creditors will be unable to collect the same or any part thereof.

And humbly prays that the proceedings in bankruptcy be continued and referred to a referee for adjudication.

RAFAEL GUILLERMETY.

Pedro Gandia being duly sworn upon his oath says that he is a member of the firm of Gandia & Stubbe, and that the said firm is the agent and representatives of the said aforegoing creditor Ed. Maurer, that he has read the foregoing; that the contents thereof *is* true as he verily believes.

P. GANDIA.

Sworn to and subscribed before me this 9th day of February 1904.

H. H. SCOVILLE,
Clerk U. S. District Court for Porto Rico,
By FRANK ANTONSANTI,
Deputy Clerk.

105 *Petition of Heller, Long & Company.*

(Filed February 24, 1904.)

In Bankruptcy. No. 11.

In the Matter of SUCESORES DE JOSÉ HERNAIZ.

And now come Heller, Long & Company and represent to the Court that they are creditors of the firm of Sucesores de José Hernaiz above named in the full and just sum of one thousand two hundred ninety-three dollars and sixty-five cents (1,293.65) for goods and merchandise furnished at their request and respectfully — that they be admitted to join the petition of Ed Maurer herein, in opposition to the discharge of the said bankrupts, and that the said matter be heard and referred to the Referee in Bankruptcy, for adjudication, etc.

HELLER AND LONG,
By RAFAEL GUILLERMETY,
Their Attorney.

106 The United States District Court for Porto Rico, February 20, 1904.

No. 11.

In re SUCESORES DE JOSÉ HERNAIZ.

Opinion.

The creditors, who filed the petition to have José Hernaiz & Company and the individual partners thereof declared bankrupts, moved to dismiss the proceeding. Thereupon the defendants were required to file a schedule of their creditors and it was ordered that notice should be given of the proposed dismissal of these proceedings. Such schedule was filed and it is shown notice has been given.

One of the creditors, to wit, Ed Maurer, now objects to the dismissal; and having heretofore filed a statement of such opposition, he now files grounds therefor. It is shown by the schedule of creditors filed by the defendants that he is a creditor to the amount of $4,073.67, and this is the amount he asserts is owing to him. It is urged on behalf of the defendants that the proceeding should be dismissed upon the ground that three creditors should object. In other words, that the same number of objecting creditors is required that under Section 59 of the Bankrupt Law must unite to file the petition for an involuntary adjudication. I have been unable to find any ruling of any court upon this question. It may be said upon the one hand that the objecting creditor has a right to be considered, under the law, as standing in place of all the creditors who filed the petition and were entitled to prosecute it;
107 that otherwise fraud and injustice might often occur through combination or otherwise. Upon the other hand, it may be urged that the same number of creditors should be required to prosecute it, that is required to set the proceeding upon foot; that they in fact join in the proceeding to supply a deficiency. Thus, if one of the three necessary petitioning creditors in an involuntary case be disqualified from being such by not having a provable claim, and no other creditor offers to join, then the proceeding should be dismissed.

It is unnecessary, however, in this case to determine this point. It is shown by the schedule and also by his own affidavit filed herein that Julian Munsuri, who is at least a special partner of the defendant firm, has purchased most of the claims against the defendants and is now the owner thereof. The petition avers that he is a partner. Not estimating the debts now held by him, the number of creditors is less than twelve. Under Section 59 of the Bankrupt Law, if there be less than twelve creditors, one of them, whose debt is $500.00 or over, may file a petition to have the debtor adjudicated a bankrupt.

Under the circumstances existing in this case, the grounds of opposition to the motion to dismiss this proceeding are sustained and the motion is overruled.

(S'g'd) WM. H. HOLT, *Judge.*

Filed Feb. 20, 1904.

108 *Affidavit of Julian de Munsuri.*

(Filed December 7, 1903.)

In Bankruptcy. No. 11.

In the Matter of SUCESORES DE JOSE HERNAIZ, Bankrupts.

Now comes Julian Munsuri, owner of a claim for $16,819.86 against said alleged bankrupt firm for money loaned, and also

owner by assignment and in good faith of the claims against said firm originally held by the following persons and firms, to wit:

Heirs of Vicente Juan de Palma; Jaffe & Sons; Stavert, Sigomala & Co.; A. & S. Henry & Co.; Schill, Seebohm & Co.; Asemard & Leonard; Ysidro Gassol & Son; S. E. Heyman & Co.: Graciano Mestre; José Llona; Ramon Fernandez; Smith, Hogg & Co.: Bernheimer & Walter; Garner & Co.; Sweetser, Pembroke & Co.; Sherman, Reid & Co.; American Trading Co.; Tefft, Weller & Co.; Everett, Heany & Co.; José M. Peña; Sucesores de Castañer; and Francisco Cadierno; and as one of the creditors of said firm consents that the involuntary petition in bankruptcy now pending against said firm may be dismissed.

JULIAN DE MUNSURI.

UNITED STATES OF AMERICA,
District of Porto Rico:

Julian Munsuri, being duly sworn, says that he is the creditor signing the foregoing consent, that he is the bona fide holder for value of the various claims above enumerated and that he has signed the foregoing for the purpose therein expressed.

JULIAN DE MUNSURI.

Sworn to and subscribed before me *me* this 7th day of December, 1903.

H. H. SCOVILLE,
Clerk U. S. District Court of Porto Rico.
By FRANK ANTONSANTI,
Deputy Clerk.

109 *Withdrawal of Opposition of Heller & Long and Ed. Maurer.*

(Filed March 28, 1904.)

In Bankruptcy. No. 11.

SWEETSER, PEMBROKE & Co. et al.
vs.
SUCCESSORS OF HERNANIZ & Co., Bankrupts.

Now come Heller & Long and Ed Maurer, the creditors opposing the dismissal of the petition in involuntary bankruptcy in the above entitled suit, by their attorneys Jos. Anderson, Jr., and Rafael Guillermety, and hereby withdraw their opposition to the dismissal of said involuntary petition.

JOSEPH ANDERSON, JR.,
RAFAEL GUILLERMETY,
Attorneys for Heller & Long and Maurer,
By JOS. ANDERSON, JR.

110 *Consent for Dismissal of Proceedings of Miguel Arsuaga.*

(Filed January 30, 1904.)

No. 11.

In the Matter of SUCESORES DE JOSE HERNANIZ & COMPANY, Bankrupts.

Miguel Arsuaga respectfully represents to the court that he is one of the creditors of the above named bankrupts, and that he has duly received notice of the petition filed by the opposing creditors praying a dismissal of these proceedings;

And deponent says that he has no opposition to make in reference to said dismissal and therefore files this his consent thereto.

Barceloneta, Porto Rico, January 27th, 1904.

MIGUEL ARSUAGA.

111 In the District Court of the United States for Porto Rico, Sitting at San Juan.

In Bankruptcy. No. 11.

SWEETZER, PEMBROKE & Co. et al.
versus
SUCESORES DE JOSÉ HERNAIZ & Co.

Dismissal of Proceedings.

Now come Sweetzer, Pembroke & Company, Sherman Reid & Company, The American Trading Company, Tefft Weller Company, Bernheim & Walter and Heller Long & Company, petitioning creditors herein and by their Attorneys Francis H. Dexter and Henry F. Hord, dismiss these proceedings.

San Juan, P. R., December 2nd, 1903.

(Sgd.) FRANCIS H. DEXTER,
(Sgd.) HENRY F. HORD,
Attorneys.

112 In the District Court of the United States for Porto Rico, March 28, 1904.

In Bankruptcy. No. 11.

SWEETZER, PEMBROKE & Co. et al.
vs.
SUCESORES DE JOSÉ HERNAIZ & Co.

This cause coming on for hearing, the defendants Sucesores de José Hernaiz & Co. appeared by their solicitor N. B. K. Pettingill,

and the contesting creditors Heller, Lang & Co. and Ed. Maurier appearing by their solicitors J. Anderson, Jr., and Rafael Guillermety, and thereupon said creditors through their solicitors filed a stipulation withdrawing their opposition to the dismissal of this voluntary petition, and it appearing that notice has been sent to all the creditors of Sucesores de José Hernaiz & Co. of the motion to dismiss this proceeding, it is now so ordered, and the case is dismissed.

113 SAN JUAN, P. R., *November 3rd,* 1903.

Received from Sucesores de José Hernaiz & Compañia the sum of $3515.45, in full settlement of the account of Tefft, Weller & Co. against the said firm of Sucesores de José Hernaiz & Compañia.

DEXTER & HORD,
Attorneys for Tefft, Weller & Co.

NOTA.—Es entendido que la cantidad que expresa el presente recibo, ha sido satisfecha por don Julian Munsuri y no por los suscribientes como equivocadamente se hace constar en el mismo.
San Juan, P. R. fecha ut supra—

SUCS. DE JOSÉ HERNAIZ.
pp. JOSÉ DE URREJOLA.

Paguese á la orden de Sucs. de José Hernaiz valor recibido.
Pto. Rico 18 Abril de 1904.

JULIAN DE MUNSURI.

Translation of the Above.

N. B.—It is understood that the amount set forth in the receipt herein has been paid by Mr. Julian Munsuri, and not by the undersigned, as it is stated thereon by mistake.
San Juan, Pto. Rico, dated—ut supra—

SUCS. DE JOSÉ HERNAIZ.
pp. JOSÉ DE URREJOLA.

Pay to the order of Sucs. of José Hernaiz value received.
Pto. Rico, April 18, 1904.

JULIAN DE MUNSURI.

R SAN JUAN PTO. RICO, *November 3rd,* 1903.

114 SAN JUAN, PTO. RICO, *November 3rd,* 1903.

Received from Sucesores de José Hernaiz & Compañia the sum of $434.94, in full settlement of the account of Everett, Heaney & Co. against the said firm of Sucesores de José Hernaiz & Compañia.

DEXTER & HORD,
Attorneys for Everett, Heaney & Co.

NOTA.—Es entendido que la cantidad que expresa el presente recibo, ha sido satisfecha por don Julian Munsuri y no por los suscribientes como equivocadamente se hace constar en el mismo.
San Juan, P. R. Fecha— Utsupra—

SUCS. DE JOSÉ HERNAIZ.
pp. JOSÉ DE URREJOLA.

Paguese á la orden de Sucs. de José Hernaiz valor recibido.
Pto. Rico, 18 Abril de 1904.

JULIAN DE MUNSURI.

Translation of the Above.

N. B.—It is understood that the amount set forth in the receipt herein has been paid by Mr. Julian Munsuri, and not by the undersigned, as it is stated thereon by mistake.

San Juan, Pto. Rico, dated—ut supra.

SUCS. DE JOSÉ HERNAIZ.
pp. JOSÉ DE URREJOLA.

Pay to the order of Succs. of José Hernaiz value received.
Porto Rico, April 18, 1904.

JULIAN DE MUNSURI.

115 SAN JUAN, PTO. RICO, *November 3rd,* 1903.

Received from Sucesores de José Hernaiz & Compañia, the sum of $1700.70, in full settlement of the account of Sweetser, Pembrook & Co. against the said firm of Sucesores de José Hernaiz & Compañia

WALTER P. WALSH,
Agent for Sweetser, Pensbrook & Co.

NOTA.—Es entendido que la cantidad que expresa el presente recibo, ha sido satisfecha por don Julian Munsuri y no por los suscribientes como equivocadamente se hace constar en el mismo.

San Juan, P. R. fecha—utsupra—

SUCS. DE JOSÉ HERNAIZ.
pp. JOSÉ DE URREJOLA.

Paguese á la orden de Sucs. de José Hernaiz valor recibido.
Pto. Rico 18 Abril de 1904.

JULIAN MUNSURI.

Translation of the Above.

N. B.—It is understood that the amount set forth in the receipt herein has been paid by Mr. Julian Munsuri, and not by the undersigned, as it is stated thereon by mistake.

San Juan, Pto. Rico, dated—ut supra—

SUCCS. DE JOSÉ HERNAIZ.
pp. JOSÉ DE URREJOLA.

Pay to the order of Succs. of José Hernaiz value received.
Pto. Rico, April 18, 1904.

JULIAN DE MUNSURI.

116 SAN JUAN, PTO. RICO, *November 3rd,* 1903.

Received from Sucesores de José Hernaiz & Compañia, the sum of $406.02, in full settlement of the account of Garner & Co. against the said firm of Sucesores de José Hernaiz & Compañia.

DEXTER & HORD,
Attorneys for Garner & Co.

NOTA.—Es entendido que la cantidad que expresa el presente recibo, ha sido satisfecha por don Julian Munsuri y no por los suscribientes como equivocadamente se hace constar en el mismo.
San Juan, P. R. fecha ut supra.

SUCS. DE JOSÉ HERNAIZ.
pp. JOSÉ DE URREJOLA.

Paguese á la orden de Sucs. de José Hernaiz valor recibido.
Pto. Rico, 18 Abril de 1904.

JULIAN DE MUNSURI.

Translation of the Above.

N. B.—It is understood that the amount set forth in the receipt herein has been paid by Mr. Julian Munsuri, and not by the undersigned, as it is stated thereon by mistake.
San Juan, Porto Rico, dated—ut supra—

SUCS. DE JOSÉ HERNAIZ.
pp. JOSÉ DE URREJOLA.

Pay to the order of Sucs. of José Hernaiz value received.
Porto Rico, April 18, 1904.

——— ———.

117 SAN JUAN, PTO RICO, *November 3rd,* 1903.

Received from Sucesores de José Hernaiz & Compañia, the sum of $193.31, in full settlement of the account of S. F. Heyman & Co. against the said firm of Sucesores de José Hernaiz & Compañia.

DEXTER & HORD,
Attorneys for S. F. Heyman & Co.

NOTA.—Es entendido que la cantidad que expresa el presente recibo, ha sido satisfecha por don Julian Munsuri y no por los suscribientes como equivocadamente se hace constar en el mismo.
San Juan, P. R. fecha—utsupra—

SUCS. DE JOSÉ HERNAIZ.
pp. JOSÉ DE URREJOLA.

Paguese á la orden de Sucs. de José Hernaiz valor recibido.
Pto. Rico 18 Abril de 1904.

JULIAN DE MUNSURI.

Translation of the Above.

N. B.—It is understood that the amount set forth in the receipt herein has been paid by Mr. Julian Munsuri, and not by the undersigned, as it is stated thereon by mistake.
San Juan, Pto. Rico, dated—ut supra.

SUCS. DE JOSÉ HERNAIZ.
pp. JOSÉ DE URREJOLA.

Pay to the order of Sucs. of José Hernaiz value received.
Porto Rico, April 18, 1904.

JULIAN DE MUNSURI.

118 SAN JUAN, PTO. RICO, *November 3rd*, 1903.

Received from Sucesores de José Hernaiz & Compañia the sum of $180.82, in full settlement of the account of Sherman, Reid & Co. against the said firm of Sucesores de José Hernaiz & Compañia.

DEXTER & HORD,
Attorneys for Sherman, Reid & Co.

NOTA.—Es entendido que la cantidad que expresa el presente recibo, ha sido satisfecha por don Julian Munsuri y no por los suscribientes como equivocadamente se hace constar en el mismo.
San Juan, P. R. fecha ut supra.

SUCS. DE JOSÉ HERNAIZ.
pp. JOSÉ DE URREJOLA.

Paguese á la orden de Sucs. de José Hernaiz valor recibido.
Pto. Rico, Abril 18 de 1904.

JULIAN DE MUNSURI.

Translation of the Above.

N. B.—It is understood that the amount set forth in the receipt herein has been paid by Mr. Julian Munsuri, and not by the undersigned, as it is stated thereon by mistake.
San Juan, Pto. Rico, dated—ut supra.

SUCESORES DE JOSÉ HERNAIZ.
pp. JOSÉ DE URREJOLA.

Pay to the order of Sucs. of José Hernaiz value received.
Porto Rico April 18, 1904.

JULIAN DE MUNSURI.

119 SAN JUAN, P. R., *Diciembre 2 de* 1903.

Recibí de don Julian Munsuri un giro del American Colonial Bank contra Muller Schall & Company, de New York por la suma de ochocientos veinte y cuatro dollars y cuarenta y cinco centavos ($824.45) á favor de Bernheimer & Walter, New York.
Tambien he recibido de dicho Sr. Munsuri la cantidad de ciento cincuenta dollars ($150.00) en saldo de la cuenta en concepto de gastos y honoharios, segun convenio hecho.

F. H. DEXTER.

Paguese á la orden de Sucs. de José Hernaiz valor recibido.
Pto. Rico 18 Abril de 1904.

JULIAN DE MUNSURI.

Translation of the Above.

SAN JUAN, PTO. RICO, *December* 2, 1903.

I received from Mr. Julian Munsuri a draft issued by the American Colonial Bank on Muller Schall & Company, of New York, for the sum of Eight hundred and twenty four dollars and forty-five cents ($824.45) payable to Bernheimer & Walter, New York.

I also received from said Mr. Julian Munsuri the sum of one hundred and fifty dollars ($150.00) balance by account for expenses and fees, as agreed.

F. H. DEXTER.

Pay to the order of Sucs. de José Hernaiz value received.
Porto Rico, April 18, 1904.

JULIAN DE MUNSURI.

120 Los Sres. Sucs. de José Hernaiz, San Juan, En cuenta corriante con Schill, Seebohm & Co., Ltd.

Debe.					*Haber.*
1902. Dic. 31. A saldo	1902. 31 Dic.....	120	421 – 11		50.250
1903. Abril 25. Intereses a 6%	1903. 30 Abril.....	...	8 6 1		
			£429 7 –		50.520
1903. Abril 25. A saldo	1903. 30 Abril.....	...	429 7 –		
1903. Abril 25. Por saldo de numeros	1903. 30 Abril.....	...	... .		50.520
" " saldo a cta. nueva " "		...	429 7 ..		
			£429 7 –		50.520

S. E. ú O.

MANCHESTER, 20 *de Abril* /03.

Schill, Seebohm & Co., Limited.

(Character Unknown) Director.

En nuestro caracter de comisionados de los Sres. Schill, Seebohm & Co. Ld. de Manchester para este caso, cedemos y traspasamos en su nombre á favor de Don Julian de Munsuri, todos los derechos y acciones del presente credito, sin ulterior responsabilidad por nuestra parte y la de nuestros citados representados.

San Juan, P. R., 25 Junio de 1903.

SANTISTEBAN CHAVARRI & CO.

Paguese á la orden de Sucs. de José Hernaiz valor recibido.
Pto. Rico, 18 Abril de 1904.

JULIAN DE MUNSURI.

Translation of the above.

Messrs. Secs. of José Hernaiz, San Juan, in the account current with Schill, Seebohm & Co., Ltd.

Debtor.				*Credit.*
1902. Dic. 31. Balance	1902. 31 Dic.	120	£421 – 11	50.250
1903. April 25. Interests 6%	1903. 30 April	...	8 6 1	
			£429 7 –	50.250
1903. April 25. Balance	1903. 30 April	...	429 7 –	
1903. April 25. Balance of nos.	1903. 30 April	...	... .	50.250
" " on new act.	" "	...	429 7 –	
			£429 7 –	50.520

S. E. ú O.

MANCHESTER, *April* 25, '03.

Schill, Seebohm & Co., Lmt.

(Character Unknown) Director.

121 In our capacity as representatives of Messrs. Schill, Seebohm & Co. Ltd. of Manchester, for this case, we pass over and tansfer in their name and to Mr. Julian Munsuri all their rights, interest and actions on the claim herein.

San Juan, Pto. Rico, June 25, 1903.

SANTISTEBAN CHAVARRI & CO.

Pay to the order of Succs. of José Hernaiz value received.

Porto Rico, April 18, 1904.

JULIAN DE MUNSURI.

122 Messrs. The Succs. of José Hernaiz, San Juan, Pto. Rico, in act. current with A. & S. Henry & Co., Ltd.

1902.	*Dr.*	Interest to 30 Apr., '03.
Nov. 15. Balance of acct. rendered—		
Cash 30th Nov. '02		£2,508 11 10
151 days' interest to 30th April, 1903		51 17 11
1903. April 30th. Postages, etc, to date		2 8
Dr. Bal'ce. Cash 30th April, '03		£2,560 12 5

E. E.

MANCHESTER, 30*th April*, 1903.

A. & S. Henry & Co., Limited.

A. E. Ruthwell, Director.

Como apoderado de los Sres. A. & S. Henry & Co. Ld. de Manchester, cedemos y traspasamos á favor de don Julian de Munsuri todos los derechos y acciones del presente credito, sin ulterior responsabilidad por nuestra parte y la de nuestros citados representados.
San Juan P. R. Junio de 1903.

JOSÉ SANTISTEBAN ANTO, *Martial.*

Paguese á la orden de Sucs. de José Hernaiz valor recibido.
Pto. Rico, 18 Abril de 1904.

JULIAN DE MUNSURI.

Translation of the Above.

E. E.

MANCHESTER, 30*th April*, 1903.

A. & S. Henry & Co., Limited.

A. E. Ruthwell, Director.

As attorney in fact of Messrs. A. & S. Henry & Co. limited of Manchester, we pass over and transfer to Mr. Julian Munsuri all of our rights, interest and actions on the claim herein, without assuming further responsibility on the matter either as to ourselves or as to our principals.
San Juan, P. R., June, 1903.

JOSÉ SANTISTEBAN ANTO, *Martial.*

Pay to the order of Sucs. of José Hernaiz value received.
Porto Rico, April 18, 1904.

JULIAN DE MUNSURI.

123

479. NEW YORK, *Feb.* 3, 1904.

M. Suc. de José Hernaiz Co., San Juan, P. R., to Grinnell, Willis & Co., 44 & 46 Leonard St.

Payable in New York City funds.

Dec., 1902.	8.	2 / Feb. 8	$20.12
	8.	To mdse. 2 / Feb. 8	11.44
	"	Freight and Insurance	3.15
	20.	2 / Feb. 20	149 33
Jan., 1903.	19.	Freight & Insurance	9.62
	3.	2 / M'ch 6	473 93
	"	Freight & Insurance	15.82
	17.	2 / M'ch 20	148.01
	31.	" Apr. 3	623.37
	"	Freight & Insurance	20.05
Feb.	14.	2 / Apr. 17	183.00
	"	" " " "	218.58
	14.	Freight & Insurance	9.62
			$1,886.04
		CR.	
1902. June	6.	Allowance	4.52
			1,881.52

Certified correct.

GRINNELL, WILLIS & CO.

Subscribed and sworn to before me this 4th day of February, 1904.

MAX COHEN,
Notary Public.
(Characters unknown.)

Debidamente autorizado cedo el montante de esta cuenza á favor de don Julian Munsuri.
San Juan P. R. 26 Febero de 1904.

Lw. J. TEXIDOR.

Paguese á la orden de Sucs. de José Hernaiz valor recibido.
Pto. Rico 18 Abril, 1904.

JULIAN DE MUNSURI.

Translation of the Above.

Being properly authorized for this act I transfer this claim to Mr. Julian Munsuri.
San Juan, P. R. February 26, 1904.

Lw. J. TEXIDOR.

Pay to the order of Sucs. of José Hernaiz value received.
Porto Rico, April 18, 1904.

JULIAN DE MUNSURI.

124

Sres. Succes. de José Hernaiz. San Juan. En cuenta corriente con American Trading Co.

Debe.					Haber.
1903.					
Enero. 1.	Cta. de esta fecha	1,249 28	181		37 68
23.	Factura por Phila	116 58	158		3 08
Marzo. 10.	" " Coamo	117 10	112		2 18
13.	N / Débito	1 98	109		03
Junio 1.	Factura Enero 9, '03	239 07	172		6 85
30.	Franqueos	25			
30.	Intereses á 6% pa.	47 64			
		$1,771 90			$49 82
1903.					
Junio 30.	Saldo	$1,654 80			
1903.					
Junio 12.	N / Crédito Marzo 13	117 10	112		2 18
30.	Saldo de intereses				47 64
"	" ac / nueva	1,654 80			
		$1,771 90			$49 82

(Character unknown.)

Nota—Es entendido que la cantidad que expresa el presente recibo, ha sido satisfecha por Don Julian Munsuri y no por los suscribientes como equivocadamente se hace constar en el mismo.

San Juan, fecha ut supra.

SUCS. DE JOSE HERNAIZ,
Pp. JOSE DE URREJOLA.

New York, *Julio* 1, *de* 1903.

(Unknown) S. E. ú O. American Trading Co., (character unknown,) Vice-President.

Páguese á la orden de Sucs. de José Hernaiz valor recibido.
Pto. Rico, 18 Abril de 1904.

JULIAN DE MUNSURI.

Translation of the Above.

Messrs. Succs. de José Hernaiz. San Juan. In the account-current with American Trading Company.

Debtor.					Credit.
1903.					
January 1.	The account up to date	1,249 28	181		37 68
23	As per invoice by the "Phila."	116 58	158		3 08
March 10.	" " " " " "Coamo"	117 10	112		2 18
13.	Charge	1 98	109		03
June 1.	Invoice of Jan. 9, '03	239 07	172		6 85
30.	Postage	25			
30.	Interest at 6%	47 64			
		$1,771 90			$49 82

125

1903.					
June 30.	Balance	1,654 80			
1903.					
June 12.	Our credit March 13	117 10	112		2 18
30.	Balance of interest				47 64
30	" " new account	1,654 80			
		$1,771 90			$49 82

(Character unknown.)

N. B.—It is understood that the amount set forth in the receipt herein has been paid by Mr. Julian Munsuri, and not by the undersigned, as it is stated thereon by mistake.

San Juan, Porto Rico, dated ut supra.

SUCCS. DE JOSE HERNAIZ,
Pp. JOSE DE URREJOLA.

NEW YORK, *July* 1, 1903.

(Unknown) S. E. ú O. American Trading Co., (character unknown), Vice-President.

Pay to the order of Succs. de José Hernaiz value received.

Porto Rico, 18 April, 1904.

JULIAN DE MUNSURI.

126 In the District Court of the United States for Porto Rico.

Bankruptcy. No. 22.

In the Matter of SUCESORES DE JOSÉ HERNAIZ, Bankrupts.

Report and Finding of Referee on Motion for Disallowance of Claims.

To me, the undersigned, one of the Referees in Bankruptcy of this court, to whom was referred the above cause in bankruptcy, was presented a motion by Julian Munsuri in the course of the proceedings in this cause for the reconsideration and disallowance of the claims of A. & S. Henry & Co., S. E. Heymann & Co., Tefft Weller & Co., Sherman, Reid & Co., (Sherman & Sons' Co.), Bernheimer & Walter, Garner & Co., Sweetser Pembroke & Co., Everett Heaney & Co., Grinnell, Willis & Co., Schill, Seebolm & Co., and American Trading Co., all of which were filed before me and allowed May 13, 1907; and in support of said motion were filed receipts from all the said creditors except A. & S. Henry & Co., Grinnell, Willis & Co., and Schill, Seebolm & Co. An assignment of their debts from these last three was filed.

The parties appeared before me by their attorneys and witnesses, were examined, and testimony taken, and now being fully informed and having the briefs for and against said motion before me, I make the following findings of fact and conclusions of law:

Findings of Fact.

I.

The firm of Sucesores de José Hernaiz was formed on May 13, 1895, with Julian Munsiri as a special partner and José Trueba and Isidor Llona as general partners; Llona withdrew in 1897 and the firm continued with Trueba as the only general partner and with Munsuri as special partner down until 1904. Munsuri had prior to 1895 been a general partner in firm having the same name, Sucesores de José Hernaiz, and Trueba, his nephew, had been a clerk in that firm.

127

II.

Though all of the books of account of the firm, except the last ledger opened April 30, 1902, and the journal opened the February previous, have been destroyed, still by these last books it is seen that an inventory was taken and that the capital of the firm on April 30, 1902, was $48,587.11, of which $40,562.80 was the portion credited to Munsuri, and $8,024.31 was the portion credited to Trueba. On this same date, April 30, 1902, the ledger shows undistributed profits of $25,025.62 carried forward from the previous ledger. These profits were fictitious for the interest and discount account showed a loss of $1,892.39 and the general expense account showed a loss of $2,124.92, both of which accounts should have been closed out into the profit and loss account, and because the testimony showed that at the time of the distribution of these profits, the firm could not meet its debts and had been unable to collect in its outstanding accounts. These fictitious profits were distributed as dividends on June 27, 1902, $15,185.90 to Munsuri and $6,822.66 to Trueba, the rest being distributed by way of gift to two clerks in the employ of the firm—Messrs. García and Urrujola.

III.

At the time of the distribution of these profits, June 27, 1902, Munsuri stood in debt to the firm for monies and goods withdrawn to the extent of $22,752.79, and Trueba's indebtedness to the firm was $10,369.01. The share of each in these fictitious profits was applied in cancelling the indebtedness of each partner and the capital account of both Munsuri and Trueba was reduced sufficiently to cancel the balance of the indebtedness of each partner to the firm. Thus by a distribution of fictitious profits and a withdrawal of capital by each partner, his individual debt to the firm was wiped out with the result that the firm's capital was reduced from $48,587.11 to $37,473.87, and debts due the firm to the full extent of
128 $25,025.62 from financially responsible persons were wiped out.

IV.

On the 17th of June, 1902, due to the difficulty of collecting their accounts and to their lack of funds as recited in the testimony and in the deed of loan, Munsuri loaned to the firm $40,000.00 payable on demand, which $40,000.00 was credited to Munsuri in a separate account called, "Munsuri's Loan Account." This was done nine days previous to the distribution of the fictitious profits shown above and at a time when Munsuri's debt to the firm on his personal account was $22,752.79. This loan being made at such a time shows that Munsuri was putting money into the firm in the guise of a loan so that in case of failure he could come in as a creditor and compete with the other creditors.

On March 7, 1903, twenty-three days before the firm went into suspension of payments, the three retail stores in San Juan owned by the firm, La Primavera, La Capital de Vizcaya, and La Puertori-

queña, were transferred to Munsuri at a total valuation of $23,180.14, which amount was applied on Munsuri's loan account, leaving him as a creditor of the firm for the balance of the $40,000.00 loan, $16,819.86, for which he appeared as a creditor of the firm in the inventory filed in the San Juan District Court, April 1, 1903, in the suspension of payment proceedings. In the sale of these stores to Munsuri, the valuation of La Puertoriqueña was placed at $8,574.98, whereas the valuation of this store on the firm's books was $8,681.65, being $106.67 more than the price at which it was sold to Munsuri. La Capital de Vizcaya was sold to Munsuri at a valuation of $7,861.35, while the inventory valuation of the store was $7,981.79, being $120.44 more than the price at which it was sold to Munsuri. La Primavera was sold to Munsuri at a valuation of $6,743.81, whilst the inventory valuation by the firm of said store was $6,993.85, being $250.04 more than the price at which the store was sold to Munsuri.

These last two stores had made a profit on the previous ten
129 and one-half months' business.

V.

On April 1, 1903, Sucesores de José Hernaiz filed a petition in suspension of payments in the San Juan District Court, to which they attached as required by law, an inventory of their assets and liabilities and a proposition of settlement to the creditors of fifty per cent, and the other fifty per cent in four years in annual instalments without interest and without security. Notices of this proceeding and of the proposition for payment of the creditors were sent to all the creditors. June 4th was appointed as the date for the meeting of creditors, but no meeting was held because bankruptcy proceedings were commenced in the Federal Court, thus superseding the proceedings in suspension of payments under the local law.

VI.

On June 8, 1903, and involuntary petition in bankruptcy was filed in the United States District Court for Porto Rico by several of the creditors; on June 15, 1903, a motion was filed on behalf of the bankrupt to dismiss the petition and quash the service of the summons, but nothing was done during the summer months while the Judge was absent on his vacation, and in October 31 the motion to quash was overruled and the firm required to answer the petition; on November 11, Munsuri filed an answer denying his liability as a general partner and Trueba filed an answer denying the acts of bankruptcy complained of in the petition and denying insolvency; on November 23 the cause was set down for hearing for December 2nd on the issues thus raised, but on December 2nd, the day for the hearing, the petitioning creditors moved to dismiss the petition, and on December 3, 1903, an order was entered requiring the bankrupts to file a list of their creditors in order that notices of the motion to dismiss might be sent them. During the pendency of these proceedings, since June 8, 1903, Munsuri had negotiated with the creditors

and had procured an assignment from them of their credits,
130 and on December 7, 1903, Munsuri filed in the bankruptcy proceedings his consent to the dismissal of the said petition as a creditor in his own right to the extent of $16,819.86 and as owner by assignment of the credits of nearly all the rest of the creditors. Notices of the motion to dismiss the petition were sent to all of the creditors; and, there being no further opposition to the dismissal, the petition was dismissed March 28, 1904. There was never any adjudication in bankruptcy nor any reference nor was the bankrupt himself ever examined or his books submitted nor were proofs of debt ever filed. The proceedings were dismissed before they ever reached that stage, and there was no consideration on the merits of the claims of the creditors. The receipts show that on June 25, 1903, A. & S. Henry & Co., and Schill, Seebohm & Co. assigned their claims to Munsuri, no consideration being stated. On July 1, 1903, the American Trading Company assigned its claim to Munsuri; and on November 3, 1903, all of the New York creditors except Bernheimer & Walter and Grinnell, Willis & Co. gave receipts in full running in the name of Sucesores de José Hernaiz; Bernheimer & Walter later assigning their claims, December 2, 1903, to Munsuri, and Grinnell, Willis & Co. following with an assignment to Munsuri on February 26, 1904.

VII.

During the negotiations conducted by Munsuri for the purchase of claims of creditors, he represented himself always as a special partner in the bankrupt firm and denied committing any act which would make him liable by law as a general partner and asserted that he had lost as a creditor by reason of the failure of the firm more heavily than any other creditor. He used as a basis for the purchase of these claims the inventory of the liabilities and assets of the firm filed by it in the San Juan District Court in the suspension of payments proceedings. According to this Inventory, the assets were $117,481.94, and the liabilities $87,576.15. None of Munsuri's individual property was included in the assets of the firm, and
131 as the effect of the distribution of the fictitious profits of $25,025.62 was to cancel an indebtedness to the firm of the same amount, $25,025.62 of debts due the firm did not appear in the assets; also as the effect of the reduction of the capital accounts of Munsuri and Trueba by $11,113.24 was to cancel debts due the firm, this $11,113.24 indebtedness due the firm did not appear in the assets; nor did the $23,180.14, the amount at which the three stores were transferred to Munsuri twenty-three days before the suspension of payments proceedings were commenced, appear in the assets, although this transfer to Munsuri was a preference given to a partner on a fictitious debt pretended to be owed by the firm to the partner Munsuri. Thus the assets of the firm as shown in the inventory were short by $59,309.00 of what they should have appeared.

This inventory further shows Munsuri is a creditor in the sum of $16,819.86; and, as he was a general partner in the firm, he could

not have competed with the creditors as a creditor. Thus the liabilities should have been less by $16,819.86, or $70,756.29 instead of the $87,576.15 stated in the inventory.

VII.

After June 27, 1902, when the distribution of profits was made, Munsuri continued to withdraw money and merchandise from the firm, so that on June 24, 1903, the day he purchased the claims of the English creditors, the balance owed by him to the firm, according to his personal account as shown in the ledger, was $7,183.32, and by November 1, 1903, two days prior to the purchase of the claims of a majority of the New York creditors, he had increased his indebtedness to the firm to $15,373.39. During all of this time he was negotiating with the creditors for the purchase of their claims and concealing these facts from them. By April 13, 1904, he owed the firm $34,973.49, and to cancel this indebtedness all of the claims which he had pretended to purchase as a third party from the creditors, were turned in by him to the firm and credited to him, in some cases for the actual amount paid by him, or twenty-five per cent, in others for seventy-five per cent and in still others for
132 amounts having no relation to the amount paid by him therefor. It is perfectly evident that this was a fictitious transaction and was done to cancel the total indebtedness of Munsuri to the firm as appeared in his personal account.

IX.

The amount of $16,891.86, for which Munsuri appears in the inventory filed in the suspension of payments proceedings April 1, 1903, as a creditor, was later reduced by cash payments made by the firm to Munsuri amounting to $5,650.75, leaving a balance in favor of Munsuri on his so-called loan account of $11,719.11, for which he has filed his duly sworn-to proof of debt in these present bankruptcy proceedings.

X.

Of the $40,562.80, with which Munsuri is credited on April 30, 1902, as his share of the capital in the firm, and the $40,000.00 turned over to the firm June 17, 1902, under the guise of a loan, a total of $80,562.80, Munsuri has got back $15,185.90, his share of the fictitious profits declared on June 27, 1902, $7,566.89 capital withdrawn on the same date, $23,180.14 the value of the stores transferred to him on March 7, 1903, and $5,650.95 cash and credits paid to him on account of the loan, and $24,973.49, withdrawn in cash and merchandise and charged to his personal account, a total of $86,557.17, from which must be deducted the $17,687.73 which he paid to the creditors in the purchase of their claims, a net total of $68,869.44, leaving a balance out of all the monies put in the firm by him in whatever guise of $11,693.36, which lacks $25.75 of being the amount for which Munsuri is now claiming as a creditor in these present proceedings, $11,719.11.

XI.

Immediately after the loan of $40,000.00 to the firm by Munsuri, on June 17, 1902, and the declaration of fictitious div-
133 idends on June 27, 1902, the firm stocked up very heavily in merchandise bought from the creditors, most of whom appear as creditors for this same merchandise in the inventory of April 1, 1903, and have filed their proofs of debt in these present bankruptcy proceedings; so that the merchandise account of the firm jumped up from $14,092.18, the inventory of merchandise on hand April 30, 1902 to $98,413.38 on February 15, 1903, the date of the next inventory, an increase of $84,321.10. These purchases were made at a time when the firm was in no better condition than it had been in June, 1902, when the testimony shows the firm could not collect its outstanding accounts and had not sufficient funds to pay creditors and had to borrow $40,000. Furthermore the sales of this merchandise during this same period amounted to $75,787.81, on which a gross profit during this period was realized of only $195.81, out of which would have to be taken expenses for the same period.

134 *Conclusions of Law.*

There was fraud in the negotiation by Munsuri for the purchase of the claims of creditors; by the distribution of the $25,015.72 in fictitious profits June 27, 1902, and withdrawal of the capital of each partner already placed at the risk of the business, an act particularly fraudulent on the part of the special partner whose liability for the firm debts is limited to the capital contributed, (Sentencia, Supreme Court of Spain, October 7, 1881), in order to cancel debts due the firm, and by the fraudulent transfer by way of preference to Munsuri, a general partner of the firm, of the three retail stores at a value of $23,180.14 on March 7, 1903, just after the inventory of February 15, 1903 and twenty days prior to the suspension of payments, $59,309.00 of the assets of the firm were fraudulently concealed from their creditors; and the firm was guilty in addition of a positive misrepresentation to their creditors in filing in the District Court of San Juan on April 1, 1903, an inventory, and sending notice thereof to all the creditors, by which inventory their assets appeared as $117,481.94, whereas they should have appeared as $176,790.94; and there was a further misrepresentation in using said inventory as a basis of settlement of the claims of creditors. This inventory was further fraudulent and a misrepresentation in that Munsuri was put down as a creditor for $16,819.86, increasing the liabilities thereby to $87,576.15, when they should have appeared as only $70,756.29, although it has been held by this court that he was a general partner in the firm, and so he could not have competed as a creditor even had his claim been a valid and bona fide claim.

Not only was this claim by Munsuri as a credit against the firm for $16,819.96 fraudulent because he was a general partner, but it

was not a bona fide claim in itself, for it was for the balance after receiving the transfer of the stores at $23,180.14 due on the $40,000 loan made June 17, 1902, to the firm by Munsuri, on which
135 date he stood indebted to the firm for $22,752.79, and should have paid back to the firm what he owed, making the loan thereby less by more than half, and that which might be called a real loan would then have been more than cancelled by the transfer of the three retail stores at a value of $23,180.14, even assuming Munsuri to have been only a special partner and so permitted to compete with creditors for bona fide credits. This pretended loan of $40,000 was fraudulently made in that it permitted Munsuri to claim for monies he really owed the firm and the balance in money which he would have had to contribute anyway as a general partner for the payment of the liabilities of the firm.

Even should we regard Munsuri as a special partner only, and not responsible for the misrepresentation and concealment made by the firm in their inventory, still he knew about it, for he was a party to the transaction, and he took advantage of such misrepresentation in his negotiations with the creditors for the purchase of their claims, and he was guilty of a fraudulent concealment himself in not disclosing to the creditors the fact of his withdrawal of merchandise and cash from the firm, a fact peculiarly within his own knowledge amounting to $7,183.32, the day before he purchased the claims of the English creditors, and to $15,373.39 just prior to his settlement with a majority of the New York creditors.

But the Court has held Munsuri to have been a general partner in the firm (See Opinion, October 25, 1907), and under the decision his individual property should have been included in the assets of the firm.

In re Allen's Estate, 41 Minn. 430 (43 N. W. Rep. 382).
Arts. 49, 127 and 872 Code of Commerce.

And the inventory as filed and used as the basis of settlement, by not including such individual property, was a further misrepresentation and concealment by the firm of assets in fraud of creditors, and Munsuri in effect made the same representation by claiming to be a special partner.

That these fraudulent transactions and misrepresentations were all part and parcel of one continued purpose and scheme to
136 defraud the creditors for the benefit of Munsuri, is shown by the further facts that all the books of account, except the last ledger and journal, were destroyed by the firm; that the retail stores were transferred to Munsuri at less than their actual value, according to the books of the firm, but how much further less cannot be shown without the books which have been destroyed; that, although the assets of the firm were set forth in the inventory as $29,905.79 more than the liabilities, still, at the same time the firm threw the creditors into alarm by making a proposition of settlement on a basis of only fifty per cent down and the rest in four annual instalments without interest and without security, thus forcing the creditors to such terms as the firm might make; that Munsuri, after settling with the creditors, withdrew cash and merchandise from the firm so that

he was indebted to the firm on his personal account by April 13, 1904, in the sum of $34,973.49, to cancel which he turned in the credits bought by him to the firm, charging the firm in some instances what he had paid for them and in other instances seventy-five per cent of their face value, though he had bought them in at twenty-five per cent; that he was paid $5,650.75 further on account of the pretended loan; that by these last two payments to him and the previous transactions as set forth already, which amount to misrepresentation and concealment of assets, Munsuri got back $68,869.44 of the total put in by him, leaving a balance of $11,693.36, which is $25.75 less than what he is still claiming as a creditor by his proof of debt for $11,719.11 filed in these present proceedings; and by the fact that the firm stocked up very heavily between June 27, 1902, and February 15, 1903, in merchandise in anticipation of failure, and that it is largely for payment of the goods bought during that time that these creditors are now claiming in bankruptcy.

II.

In the transaction whereby Munsuri pretended to purchase the claim of creditors as a third person, he must be considered
137 in law as having acted for the firm, of which he has been held by this court to be a general partner (Opinion of Rodey, J., October 25, 1907).

"One partner cannot buy up for his own benefit a claim against his firm, but if he takes an assignment of such a claim he will be considered as holding it for the firm."

22 Am. & Eng. Ency. 116.

III.

The pretended purchase and sale were therefore an attempt by the debtor to compound his debts.

"A composition by a third party often takes the form of a purchase and sale of the claims of the creditors; and it is sometimes difficult to decide whether such a transaction is a true composition or merely a sale of the claims to the third party without the incidents of a composition. It would seem to be well settled, however, that the criterion by which to decide is—Was the third party really acting on behalf of the debtor? If so, the transaction is a composition."

8 Cyc. 485.

IV.

False representations by the debtor as to the amount of his assets or concealments are ground for setting aside a composition.

"The theory of a composition is that the cash value of the bankrupt's estate is substantially divided among his creditors in proportion to their respective debts."

Loveland on Bankruptcy, p. 548, 1st Edition.

"The policy of the law demands the utmost good faith on the part of the debtor in effecting a composition; and any fraud, misrepresentation, concealment or suppression practiced by him with respect to any material fact will vitiate the composition and entitle a creditor injured thereby to treat it at his option as null and void at any time within the statute of limitations. The mere receipt of part, or even all of the benefit of the composition will not validate the transaction."

8 Cyc. 463.

"As the consideration of a composition is the surrender by the creditors of some portion of what is justly due them, the strictest good faith is required. Any departure from good faith in the slightest degree avoids the transaction as to innocent parties who may thereupon ignore the composition and sue on their original claims. And an innocent creditor, thus suing, on the original debt, need not rescind the composition or return any sums which may have been received under it; but such sums will be considered merely as payments pro tanto on the original debt."

6 Am. & Eng. Ency. 392 and notes.

"A fraudulent conveyance prior to the composition invalidates the composition."

6 Am. & Eng. Ency. 394.

138 "If a debtor having a dormant partner, puts him on the list of creditors, the composition is thereby rendered void." Carter v. Connell, 1 Whart. (Pa.) 392.

See also

8 Cyc. 464.
6 Am. & Eng. Ency. 393 and note.
Armstrong v. Bank, Fed. Case No. 545.

The Bankruptcy Act of 1898 specifically provides in its various provisions against fraudulent preferences and concealments, and most of the decisions involving the kind of fraud shown here are under the Bankruptcy Act, and therefore strictly not in point as the acts were forbidden by statute. If it were not for this fact, there would be more decisions as to fraud in a common law composition.

V.

The transaction between Munsuri and the creditors cannot in any way be considered a composition under the bankruptcy act for there was no examination of the debtor nor confirmation by the court, as is required for a composition under the bankruptcy act.

See Bankruptcy Act, Sec. 12.

VI.

In view of these findings of fraud, it is unnecessary to pass upon the question whether there was an accord and satisfaction or a com-

promise and settlement, for in any case fraud is ground for setting aside.

1 Am. & Eng. Ency. 428.
1 Cyc. 338.
8 Cyc. 528.
Elfelt v. Snow, Fed. Case No. 4342.

VII.

The dismissal of the petition in bankruptcy No. 11 by consent does not bar the creditors from subsequently putting in their claims in these subsequent bankruptcy proceedings.

6 Ency. Pl. & Pr. 986-7.
45 Fed. Rep. 588.

139 VIII.

The remedy of the creditors is to sue for the balance of their claims, treating the payment already made as merely a payment on account.

1 Cyc. 338.
Elfelt v. Snow, Fed. Case No. 4342.

Conclusion.

Inasmuch as there was fraud in the negotiations with creditors for the purchase of their claims by way of misrepresentation of assets and concealments of assets, material facts that would have influenced the creditors in their acceptance of the offer made by Munsuri, the receipts taken from the creditors were fraudulently obtained and cannot constitute a bar to their present claims for the balance of their debts, and therefore the motion to disallow the claims is overruled.

Oct. 15, 1908.

(Sd.) ANDRES B. CROSAS,
Referee in Bankruptcy.

140 In the United States Court for the District of Porto Rico.

In re SUCCESORES DE JOSE HERNAIZ, in Bankruptcy.

Petition for Review.

Now at this time comes Julian Munsuri, by his Solicitor, Willis Sweet, and petitioning for the review of an order of the Referee in the above entitled matter, respectfully submits:

I.

That on the 27th day of September, 1906, the mercantile firm of Succesores of Jose Hernaiz & Co. was duly adjudged bankrupt;

and in an opinion handed down by said Honorable Court on the 14th day of July, 1908, petitioner was held to be a general partner in said firm.

II.

That on the question of the former settlement and adjudication of the claims, or alleged claims, pending against said bankrupt firm, except the claim of Heller & Long, the Court in said opinion expressed a preference for having said question first passed upon by the Referee; and in accordance with said suggestion, Julian Munsuri, by his attorney, Willis Sweet, appearing specially for that purpose, on the — day of July, 1908, filed a petition with A. Crosas, Referee, praying that the orders theretofore made allowing said claims should be reconsidered, vacated and set aside, and said claims disallowed.

III.

Proceedings were had on said petition, briefs were filed by the respective parties in support of their contentions, and on the 15th day of October, 1908, the Honorable Referee handed down his opinion overruling said motion to disallow said claims.

141 IV.

The main ground for the decision as stated is that there was fraud in the negotiations with creditors for the purchase of said claims. But there was no fraud, as your petitioner respectfully submits, of whatever character or kind, in negotiating said settlement, but that the whole transaction was fair and entered into by the creditors with a full knowledge of all of the conditions and circumstances of the case; that no misrepresentation or attempt to deceive the creditors were made, and that there is no charge of fraud in the record, and no evidence whatever of fraud in connection with the transaction.

Wherefore, your petitioner alleges and contends that the Referee erred:

(1) In finding that there was any fraud in the negotiations or in any part of the transactions had; or that any issue of fraud had been raised.

(2) In not upholding said transactions and declaring them a bar to the present claims of the alleged creditors concerned;

(3) In overruling the motion to disallow said claims.

(4) In holding that the decision of the District Court was not an adjudication.

(5) In disregarding the question of laches raised by petitioner at said hearing.

And your petitioner therefore prays that you forthwith certify to the Judge the questions involved, together with the evidence relating thereto, and the findings and order made in the premises, to the end that said order of October 15th, 1908, may be reviewed by the Judge of said Court, and error being found, that it may be vacated

and set aside, and proper orders made in accordance with the petition heretofore filed.

WILLIS SWEET,
Attorney for Julian Munsuri,
Appearing Specially for the Purposes Herein Set Forth.

Accepted service of foregoing petition by receiving a copy of the same this 21st day of Oct. 1908.
WM. H. HAWKINS.

[Upon the back of preceding page the following appeared in pencil:]

141½ At the meeting of creditors in the suspension of payments creditors were offered 50¢ on the dollar and give time to pay rest.
What was the object in selling to the firm the claims for amount to balance his account when claims had already been settled?

142 In the District Court of the United States for Porto Rico.

No. 22.

In re SUCESSORES DE JOSÉ HERNAIZ, Bankrupts.

(Not to be printed.)

Memorandum by the Court Placed in the Files, Giving Its Reasons for Overruling the Referee's Approval of Certain Claims.

This matter is before us on an appeal from the action of the Referee in approving and allowing certain accounts of creditors. The bankrupt Munsuri objects to the approval of certain of these accounts and introduces receipts and assignments of the same.

It appears that nearly three years ago (see Bankruptcy Suit No. 11) several of these creditors filed a petition in involuntary Bankrutcy against Sucessores de José Hernaiz, and after considerable pleading was done but without any adjudication or otherwise, notice was sent to all creditors and the cause was dismissed by the parties who instituted it.

We have given more than a month's time off and on to an examination of the briefs and authorities and to looking over the evidence, and it is seldom that such a painstaking effort has been made by counsel. Sometime since on the motion of a creditor who did not agree to the former bankruptcy proceedings, we held the partner Julian Munsuri to be a general instead of a special partner (see our opinion in the files). Now the creditors who settled with him in the former bankruptcy proceedings and dismissed the proceedings are coming in notwithstanding their settlement and wanting to collect the balance of their claims.

Both the Referee and their Counsel have made a most painstaking search of the books of the concern, and on the theory that
143 because the Court has held that Munsuri was a general instead of a limited partner and because they say fraud was committed in obtaining the settlement, the action of the Referee should be sustained.

We cannot agree to this. None of the former creditors were diligent and no one but one or two firms were diligent. At this late day it is not easy to tell what the considerations for making that settlement and dismissing the former bankruptcy proceeding were. All the creditors were represented by counsel. Those councel could just as well have known at that time that Munsuri was guilty of acts that would make him a general instead of a limited partner, yet they did nothing in that regard. There is no evidence of any sufficient fraud in bringing about of that settlement. Munsuri has not had his day in Court on it, neither have these creditors testified in the cause. All the evidence of fraud is made up by the Referee and Counsel for the creditors. It is no light matter to go now and take this man Munsuri's private property for the benefit of a lot of creditors who settled with him with their eyes open nearly three years ago, and when every fact that has since been brought out was staring them in the face at that time.

Counsel for the creditors as well as the Referee simply make a labored effort with a lot of book-keeping to show fraud. In our opinion above referred to in the files, it will be seen that when we rendered the same we gave no intimation that we feel ourselves bound to permit these creditors, who settled in the way stated, to come in and prove their claims, but specifically stated that we expressed no opinion as to that. We have looked over the settlement made and examined this question from end to end and our conscience will not permit us on the whole case to permit these creditors to come in now without any real showing by themselves of being mislead, deceived or defrauded other than is made by the Referee and their Attorney from the books of the bankrupt concern. No man has to
144 defend himself until he is properly attacked, and all these entries in the books might be explained were Munsuri here to do so.

The diligent only are favored in law. The approval of these accounts for which receipts and assignments were held by Munsuri and introduced and on which these few particular creditors got the money three years ago at a time when Munsuri believed himself to be a limited partner and did not know that the law made him liable as a general partner, would in our opinion be wrong and would give them an undue advantage.

Therefore the approval by the Referee of all the previously settled claims is reversed and set aside, and only the accounts of creditors who did not so settle their claims, will be permitted to be allowed, and an order to that effect will be entered.

Filed January 29, 1909.

145 *Petition for a Writ of Review to the United States District Court for Porto Rico.*

To the Supreme Court of the United States of America:

In re SUCCESSORS OF JOSÉ HERNAIZ, in Bankruptcy; JULIAN MUNSURI, Petitioner.

The Petition of Julian Munsuri for a Writ of Review Directed to the United States District Court for Porto Rico to Bring Before the Supreme Court the Proceedings Had in the Above Entitled Matter Relating to the Jurisdiction of said District Court for Porto Rico Over the Person and Estate of Julian Munsuri vs J. H. Fricker, the Trustee in Bankruptcy in the Said Matter.

The President of the United States of America to the Honorable the Judge of the United States District Court for Porto Rico:

The petition of Julian Munsuri respectfully shows that because in the record and proceeding, as also in the judgment or order of the said United States District Court for Porto Rico in the above entitled proceeding, wherein was drawn in question the jurisdiction of the said United States District Court for Porto Rico, over the person and property of Julian Munsuri in said bankruptcy proceeding, and the decision was in favor of the jurisdiction of said Court; and wherein was drawn in question the relation of said Munsuri to the above entitled bankrupt firm, which decision was against said Mun-
146 suri; and wherein was drawn in question the right to subject the private property of said Munsuri to the payment of the debts of said bankrupt firm, which decision was against said Munsuri; and wherein was drawn in question whether or not said Munsuri was a limited or a general partner of said bankrupt firm under the laws of Porto Rico, which issue was decided against said Julian Munsuri; a manifest error hath happened to the great damage of said Julian Munsuri as by the said record appears:

Wherefore, the said Julian Munsuri petitions a review of the legal questions involved in said proceedings.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment or order be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this petition, so that you have the same at Washington, on the 19 day of March 1909, in the said Supreme Court to be there and then held that the record and proceedings aforesaid being reviewed, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 19 day of February 1909.

[Seal United States District Court for the District of Porto Rico.]

JOHN L. GAY,
Clerk Dist. Court of U. S. for P. R.

Allowed this 19 day of February 1909.

B. S. RODEY,
Judge of the United States Court for Porto Rico.

147 UNITED STATES OF AMERICA,
District of Porto Rico, ss:

Willis Sweet, being first duly sworn says: I am the Attorney for Julian Munsuri in the above entitled matter: I have read the foregoing petition and know the contents thereof and the same is true to my own knowledge, information and belief; I make this affidavit because the said Julian Munsuri is not in Porto Rico but is now living in the Kingdom of Spain at Bilbao of which Kingdom he is a subject and of which city he is a resident; and I am better advised of the facts and the record in this case than is the said Julian Munsuri: my knowledge is derived from the record in this case, from my examination of the same and from what has taken place in my presence and in which I have participated.

WILLIS SWEET.

Sworn to before me this 19 day of February, 1909.

JOHN L. GAY,
Clerk Dist. Court of U. S. for P. R.

I hereby certify that I have examined the foregoing petition and in my opinion the petition is well founded and that the case is one in which the prayer of the petitioner should be granted by this Court.

WILLIS SWEET,
Counselor for the Petitioner.

[Endorsed:] # 22. Bank. In the District Court of the United States for Porto Rico. In the Matter of Sucesores de José Hernaiz. In Liquidation. Bankrupt. 2/19. Writ of Error. Filed, clerk's office, United States District Court, Feb'y 19, 1909. John L. Gay, Clerk of the Court.

148 In the Supreme Court of the United States.

In the Matter of SUCCESSORS OF JOSE HERNAIZ.

Assignments of Errors.

Afterwards to wit on the fourth Monday of March, 1909, at the October term for the year 1908 of the Supreme Court of the United States, at the capital, in the city of Washington and District of Columbia, comes the said Julian Munsuri, by Willis Sweet, his attorney, and says that in the record and proceedings in the above entitled matter there is manifest error in this to wit:

I.

That the matters set forth in the proceedings had in said matter do not give this Court jurisdiction over the person or property of said Julian Munsuri, or authorize the subjection of the private property of said Julian Munsuri to the payment of the debts of said bankrupt firm.

II.

That the matters testimony tending to prove which was given before Andres Crosas, referee in bankruptcy, in the above entitled matter do not give said Court jurisdiction over the person or private property of said Julian Munsuri without his consent.

III.

That as the testimony adduced in said proceedings show- that Julian Munsuri was not at any time personally subjected to
149 the jurisdiction of said Court and also show- that he did not consent to the jurisdiction of the same, the Court erred in denying petitioner's motion to vacate the injunction restraining Munsuri from collecting his rents and also erred in not vacating all other orders theretofore entered under which jurisdiction was exercised over the private property of Julian Munsuri.

IV.

The Court erred in considering testimony presented in the Spanish language without having the same translated.

V.

The Court erred in considering the testimony of Lloyd Lyons because of his lack of knowledge of the Spanish language or of Spanish methods of book-keeping, especially in the absence of said Munsuri or the knowledge on the part of said Munsuri that said evidence was being taken to use against him personally, the said Munsuri not appearing to have been brought within the jurisdiction of said Court or to have consented thereto.

VI.

The Court erred in holding that said Julian Munsuri was a general and not a special partner.

VII.

The Court erred in receiving as evidence the relation of Munsuri to said partnership letters or the alleged contents of letters written in the Spanish language and not translated.

VIII.

The Court erred in reversing the order of the Referee releasing said Julian Munsuri and his property from liability on account of the debts of said bankrupt firm.

IX.

The Court erred in reversing the order of the Referee in vacating the injunction order theretofore issued in said proceeding.

X.

The Court erred in reversing the order of the Referee releasing all of Julian Munsuri's private property.

XI.

The Court erred in refusing to vacate and set aside its own order of October twenty-fifth, 1907.

XII.

The Court erred in attempting to subject Julian Munsuri or his private property to the jurisdiction of the Court without notice or without the consent of said Munsuri.

Wherefore, the said Julian Munsuri prays that the order or judgment of the said District Court of the United States for Porto Rico adjudging that it has jurisdiction over the person and private property of Julian Munsuri without notice to said Munsuri or his consenting to the jurisdiction of said Court be reversed, and that the said District Court of the United States for the district of Porto Rico be ordered to enter an order directing the vacating of all orders or adjudications of whatsoever kind to the effect that said Court has jurisdiction over the private property of said Munsuri and directing said Court to enter an order releasing the same.

WILLIS SWEET,
Attorney for Petitioner,
34 *San Francisco St., San Juan, P. R.*

Filed Feb. 19/09.

151 *Bond on Petition for Ramon Munsuris for Review.*

(Filed Feb. 19, 1909.)

In re SUCESORES OF JOSÉ HERNAIZ. In Bankruptcy.

Know all men by these presents that we Wenceslao Bosch and Damian Monserrat, both of the city of San Juan, Porto Rico, are held and firmly bound unto J. H. Fricker, trustee, in the sum of $300.00 to be paid to the said J. H. Fricker for the payment of which well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally firmly by these presents. Sealed with our seals, and dated the 19th day of February in the year of our Lord one thousand nine hundred and eight. Whereas Julian Munsuri has prosecuted a Writ of Review to the Supreme Court of the United States, to reverse the judgment or order rendered in the above entitled matter, by the Judge of the District Court of the United States for Porto Rico.

Now, therefore, the condition of this obligation is such, that if the above named Julian Munsuri shall prosecute said Writ of Review to effect and answer all damages and costs, if he fails to make said Writ of Review good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

WENCESLAO BOSCH.
DAMIAN MONSERRAT.

Sealed and delivered, and taken and acknowledged, this 19 day of February, 1909, before me.

MANUEL F. ROSSY, *Notary.*

No. 2.

Approved by
2/19/09.
B. S. RODEY, *Judge.*

152 UNITED STATES OF AMERICA,
District of Porto Rico.

Wenceslao Bosch and Damian Monserrat being first duly sworn, each for himself, and not one for the other, says: I am worth the amount specified in the foregoing bond, as the penalty thereof, in property situated within the jurisdiction of this Court, over and above all my just debts and liabilities, and in property exempt from execution.

WENCESLAO BOSCH.
DAMIAN MONSERRAT.

Subscribed and sworn before me this nineteenth 19 day of February, 1909.

MANUEL F. ROSSY, *Notary.*

No. 2.

153 Copy.

In the District Court of the United States for Porto Rico.

In the Matter of SUCESORES DE JOSÉ HERNAIZ, in Liquidation, Bankrupt.

In Bankruptcy.

Before Andrés B. Crósas, referee in bankruptcy, at San Juan, Porto Rico, on this the sixteenth day of October, 1906, appeared José Trueba Munsuri general partner of the firm of Sucesores de José Hernaiz, in liquidation.

In the absence of Henry E. Hord, Esq., the said José Truebas was represented by Wenceslao Bosch, Esq.

The said JOSÉ TRUEBAS, having been first duly sworn, testified as follows:

Examined by the REFEREE:

Q. What is your name?
A. José Truebas Munsuri.
Q. In this petition in bankruptcy filed by you in the federal court there are placed all of your debts and also of your property, both real and personal?
A. Yes.
Q. In this firm there are only two partners?
A. Two.
Q. It is a limited partnership?
A. Yes.
Q. Who is the comanditario (special partner)?
A. Julian Munsuri y Hernaiz.
154 Q. What was the capital of that firm when it was established?
A. Some 70,000 dollars in provincial currency.
Q. When was this firm established?
A. In 1891 was the first company; it was afterwards reformed.
Q. What kind of a business was it?
A. Textile business.
Q. When was this firm first put in liquidation?
A. In 1903 or 1904.
Q. And for what reason was the firm put in liquidation?
A. We could not further continue the business of the firm. We thought we had better liquidate the business and wind it up completely.
Q. Where is Julian Munsuri?
A. In Bilbao.
Q. This capital which he brought to the firm was in cash?
A. It was in accounts, merchandise, etc.

Q. Julian Munsuri appears here as a partner of the house?
A. Yes.
Q. And Julian Munsuri appears here as a creditor?
A. That is a mortgage credit against the house which he took the money out of the bank for and loaned to the house. He mortgaged his property and gave the money to the house.
Q. This account of Heller, Long & Co. What is that?
A. That is a New York firm where we bought merchandise.
Q. And this account of Edward Maurer?
A. That is also a commercial house of New York.
Q. And these two accounts are for merchandise?
A. Yes, merchandise bought by the firm.
Q. You have no notes?
A. No. Julian Munsuri has a mortgage in his favor executed before the notary public Benitez while the rest have only their merchandise correspondence.

155 Q. The Successors of José Hernaiz & Co.. have no notes against the firm or guaranteed by the firm?
A. No, sir.
Q. Now, these fincas—this property which appears here, first there is a piece of twenty eight cuerdas situated in the barrio of Tetuan of the jurisdiction of Utuado. What is that finca?
A. Pasture, some coffee, and malleza (brush).
Q. Does it give a crop?
A. Something, but a very small amount.
Q. It has a value of eight hundred dollars?
A. That was the value at that time; it may be worth a little more now.
Q. What date is this value fixed?
A. Year before last; it was an auction sale of that property.
Q. Is this in provincial money or American money?
A. It is in gold.
Q. But you think it may be worth more?
A. To-day it is worth something more.
Q. Why?
A. Because lands in the island are worth more to-day; in that time it was worth a thousand and some odd dollars, but it was turned over to the house on an adjudication in court.
Q. What about these properties of 49 cuerdas in the barrio of Paguana?
A. That is more or less in the same condition.
Q. It is coffee?
A. It has a little coffee—it did have coffee, but it was destroyed by the cyclone.
Q. These ten pieces of land in this schedule are they in one farm?
A. No, they are in different places.
Q. All of them have houses?
A. There are some that have, others not.
Q. Which ones have?

156 A. To tell you that it would be necessary to find the deeds. But they are of very little value. The majority of them just have shacks on them.

Q. Who is in charge of these estates?
A. There is a provisional manager there to see if he can collect something, but he scarcely ever turns in anything.
Q. What is his name?
A. I know him, but I don't remember his name. It seems to me his name is Machea or something like that but I don't remember his name.
Q. All of these little fincas mentioned here produce only coffee and pasture?
A. Yes, and mallezas (brush-wood).
Q. You have none of them rented?
A. Some of them are about sold but they have not been paid for, there are contracts of sale but they have not been paid for. They are not rented.

The witness was instructed by the referee to produce the above contracts at the first meeting of creditors.

Q. The firm has always kept a complete set of books?
A. Certainly. They are in the federal court now.

The witness was instructed to have all of the books of said firm present at the same time.

Q. Are any of these properties rented?
A. I believe some of them are.
Q. Which ones?
A. I can't remember now but in the detailed note that we have that will appear; some of them are rented but as the land has been attached by the house of Edward Maurer they have taken full charge of it and we don't know whether they collect the rents or not.
Q. You don't know if they have collected any rents?
157 A. No, I don't know. They filed an attachment and of course we cannot dispose of any of the property or any of the proceeds. The federal court ordered a suspension of that annotation on the 27th of last month.
Q. This list of creditors given in Schedule A., are they collectible?
A. There are some, but few.
Q. What per cent of them are collectible?
A. That I couldn't *not* say.
Q. You have some mortgage credits?
A. There are some two or three.

The witness was directed to bring copies of all deeds in his possession at the first meeting of creditors.
Thereupon the meeting was adjourned until Monday, October 22nd, 1906, at ten o'clock A. M.

(Signed) ANDRÉS B. CROSAS, *Referee.*

158 In the District Court of the United States for Porto Rico, Sitting at San Juan.

SUCCS. DE JOSE HERNAIZ, en Liq., in Bankruptcy.

Proceedings Before the Referee in Bankruptcy, A. B. Crosas.

SAN JUAN, PORTO RICO, *January 2nd*, 1907.

Examination before Andrés B. Crosas, Referee in Bankruptcy of José Trueba, Bankrupt.

Direct examination by Mr. HAWKINS—Interpreted:

Q. Now, Mr. Truebas, on the examination, the previous examination of yourself, on the 16th day of October, you testified that the firm was formed in 1891, but that it was afterwards reformed; what do you mean by saying that it was reformed?

A. I mean that the partnership was extended from time to time and renewed, and that in 1891 one of the partners, under the agreement of 1891, afterwards went out of the firm.

Q. Who was that partner?

A. Isidoro Llona.

Q. Then from 1891 the partnership continued with only two partners?

A. On the books after 1891 Llona continued still about two years to be the managing partner.

Q. Well, when he retired from the partnership it then continued with only two?

A. With two partners.

Q. Who were they?

A. José Truebas as managing and Julian Munsuri as special partner.

Q. Was that partnership continued from time to time, extended?

A. Several times.

159 Q. When you first formed the partnership, was it done by notarial instrument?

A. They all have been by notarial agreement.

Q. The first one was made before what notary?

A. Before the Notary La Torre.

Q. And was each extension or prorrogation made by a public instrument before the same Notary?

A. No, the Notary La Torre is dead and the subsequent agreements have been drawn up as occasion required before the Notaries Valdejuli, Alvarez Nava, and Juan de Guzman Benitez, and I think, but I am not certain, that it was executed before Alvarez Nava who bought the notarial office of de La Torre.

Q. Have you copies of the partnership agreement and the extensions?

A. Some I have. Lawyer Wenceslao Bosch has them.

Q. Mr. Truebas, tell me this. Each one of those extensions were under the same terms as the partnership agreement?

A. More or less, the same conditions, they have really most of them been continuation- of the partnership.

Q. You say here that the firm commenced business with $70,000 provincial currency. What part of that $70,000.00 did you contribute?

By Mr. HORD: I shall have to object to that, as all these particulars can be seen in the partnership papers.

Q. Now you say that when the company first commenced busines- it was known as José Hernaiz & Co.?

A. No.

Q. What was the name?

A. First the partnership in which I have been concerned, was Succs. de José Hernaiz & Co., this partnership is the successor of a very much older partnership which existed before I came into it.

160 Q. Is it set forth in the partnership agreements that we have just spoken of—These notarial instruments—the interests that Munsuri had in the partnership?

A. Yes.

Q. Did those instruments show or do you know whether these instruments forming the partnership were recorded at all?

A. They are registered.

Q. In the firm name did you ever use the word "Sociedad en comandita" or any words to express the fact that it was a "sociedad en comandita?"

A. No, just Succs. de José Hernaiz.

Q. In the instrument by which this partnership was constituted does it appear to be a "sociedad en comandita?"

A. It was expressed in the partnership agreements and by circular each time the partnership was reformed that it was a "Sociedad en comandita."

Q. Who has been the manager since Llona retired?

A. I have, José Truebas.

Q. And Munsuri was the comanditario?

A. And Mr. Munsuri was the special partner.

Q. Did Munsuri have any other business?

A. He had no other business that I know of except that he had other property.

Q. Did he have any office?

A. No, he had no special office until after the Successors de José Hernaiz & Co. went into bankruptcy; after the Successors de José Hernaiz & Co. suspended payments then he established an office of his own.

Q. Then he had an office practically in the firm?

A. No, he had his office where he had his own stores.

Q. Well, did he when he came to town or did business in San Juan, did he do it there in the store of Succs. de José Hernaiz?

A. He lived in San Juan.

Q. Well, did he do business at all in the store of Succs. de
161 José Hernaiz & Co.?

A. When he set up his own stores he bought goods some times from Succs. de José Hernaiz, and some times from other people. Succs. de José Hernaiz continued for a while liquidating the business of the firm.

Q. Well, how did he protect his interests in the firm, did he look over the books of the firm?

A. He had no right as a special partner to go over the books. He exercised the rights that were given to a special partner and only those.

Q. Do you know of any time at all in which he did any outside business in the office of Succs. de J. Hernaiz & Co.?

A. No, I do not.

Q. Well, did he ever or do you know of any time in which he ever had any dealings there in the store of a business nature on behalf of Succs. de José Hernaiz?

A. Some times he did business at the special request of the managing partner of the firm, such as buying goods.

Q. Verbal requests?

A. I was the only managing partner and I some times could not go out to make purchases, and asked him verbally to do so.

Q. Did you ever authorize him to do any business in the name of the firm?

A. At this time I cannot recollect any other except that when he went to buy goods as he acted as the agent of Succs. de J. Hernaiz & Co. to buy the goods, he was authorized to draw money for the purpose, but that money was of course always charged to the account of Succs. de J. Hernaiz.

Q. In drawing that money he signed the firm name?

A. No. He never has drawn on the house.

Q. Well, did you authorize him ever to write letters on behalf of the firm?

162 A. I do not recollect having done so at the present time.

Q. Do you remember of any occasion, not merely writing letters but any other occasion on which you authorized him to sign the firm name?

A. No, I do not.

Q. Did Munsuri ever *paid* any money out on account of the firm?

A. The only amount which he paid was a sum of money which he delivered to Succs. de José Hernaiz & Co. for them to pay their obligations which had become due at the time.

Mr. HAWKINS: I move to strike the answer out as not responsive. What I asked is if he had made any payments on account of Munsuri?

Mr. CROSAS: I think that it is sufficient.

Q. Did he make those payments personally or did the firm make them?

A. Mr. Munsuri bought debts due from the firm and the firm repaid him the amounts.

Q. Then he personally paid some of the credits of the firm?

A. He bought these obligations of the firm and the firm afterwards repaid him for them, or reimbursed him.

Q. Did he buy those debts of the firm under authority from the firm?

A. I do not recollect at present because at the time that happened I was not present. I had an agent representing me at the time.

Q. Who was that agent?

A. José Urrejola.

Q. Did he ever guarantee any of the debts of the firm on behalf of the firm?

A. I cannot be certain, but I think he did.

Q. With any particular persons, do you remember of any specific instance?

A. I do not recollect exactly, it is a long time ago, but I
163 think he acted as guarantor to some of the banks then, the Spanish Bank or some other bank.

Q. Could you find out?

A. It would not be easy because most of those transactions related to firms long past, the books of which no longer exist. I think it might but I am not certain.

Q. When was the last prorrogation of the firm?

A. Less than a year before the Notary Juan de Guzman Benitez. This instrument that I refer to is not a continuation of the firm but the agreement of liquidation.

Q. I want you to tell me more or less when the last prorrogation of the firm was before the liquidation.

A. I do not recollect. They were all made by notarial agreement and all inscribed in the commercial registry.

Q. Do you remember when the liquidation was made? Did he guarantee any of those debts that you spoke of a moment ago during the existence of the last firm?

A. When he acted as guarantor it was many years ago. I do not recollect the date but it was many years ago.

Q. Well did he ever administer any part of the funds of the firm in any way at all?

A. No. In the absence of the managing partner, he the managing partner always kept an agent for the purpose of managing the business of the firm.

Q. Besides authorizing him to buy goods on behalf of the firm did you authorize him to do anything else for you as managing partner of the firm?

A. When he went to the United States or Europe he had the same authority which I would have had if I had been there representing the firm of Succs. de José Hernaiz & Co. This Authority was given to him by me as managing partner.

Q. That was more or less a necessity of your business, was it and you simply gave him verbal authority?

164 Mr. CROSAS: I think you should specify a little: change the question.

Mr. HAWKINS: In what respect?
Mr. CROSAS: As to the form of it.

Q. Did you authorize him frequently when he went away to Europe or the United States, to represent the firm?
A. I think he went to the United States one time when I could not go.

By Mr. CROSAS:

Q. Ask him if he ever went to Europe?
A. I don't recollect sending him to Europe, I sent him once to the United States because I could not go.
Q. Did he ever go to England?
A. I don't ever remember sending him there.

By Mr. HAWKINS:

Q. In what form did you authorize him?
A. In the same form as I would have authorized any employee of the house. As he was going I authorized him and thereby saved the expense of a trip by myself.
Q. That was by verbal instructions?
A. Verbal.
Q. What was his business; what was the class of Munsuri's business?
A. Living on his income.
Q. Did he work at all?
A. He lived on his income from his country places, from his houses in town. He went to Europe sometimes; until later he opened a commercial establishment.
Q. Was he a merchant, then?
A. He was a merchant in the same line of business as Succs. de José Hernaiz & Co.; dry goods.
165 Q. Had he been many years in the dry goods business?
A. Yes, a good many, twenty or thirty years.
Q. Now, on the previous examination of yourself you testified that this credit which Munsuri now claims against the firm was a mortgage credit. Was that mortgage made by public instrument?
A. It is a notarial credit, not a mortgage.
Q. Before what notary?
A. I think it was before the notary Juan de Guzman Benitez. It was a notarial credit, what was known in Spain as a preferred credit but there was nothing pledged to secure it.
Q. Was this credit of $11,719 in cash?

Mr. CROSAS: I think that is confusing; ask him how he got it as I think that was the result of a balance due him from a former account.

Q. What did this credit of $11,719 consist of?
A. It is the balance due on $40,000. advanced by him to Succs. de José Hernaiz & Co. which he secured by a mortgage on his properties, which amount he advanced to the firm when it could not meet its obligations.

Q. The house was insolvent at that time?

A. It was not insolvent, it had merchandise and property on hand but it had no actual cash with which to meet its obligations then due.

Q. Was this $11,719 delivered in cash?

Mr. HORD: I object to that question.

Mr. CROSAS: I do too.

Q. You say that this $11,719 is a balance of $40,000. Was the whole $40,000 delivered at one time?

A. I know that he secured the money by a mortgage from the American Colonial Bank, and I think that the money was taken from the Bank by Succs. de José Hernaiz & Co. to pay their obligations due in those days. The books will show if the amount was paid; I think it was.

Q. Were you an active manager at that time?

A. Yes.

166 Q. What rate of interest did this $40,000 bear?

A. We did not pay Julian Munsuri anything but we paid the interest on the loan at the bank because it was a favor which he did to the firm.

Q. Well, to whom did the firm owe that $40,000?

A. We owed it to Julian Munsuri and it was credited to his account. He owed it to the American Colonial Bank.

Q. Then, to whom did you pay interest; to the bank as agent for Julian Munsuri or to the bank direct?

A. It was paid to the bank in representation of Julian Munsuri, with a receipt signed to Julian Munsuris.

Q. When did this $40,000 become due?

A. Some time past, I don't recollect it.

Q. What was the term stipulated in the contract?

Mr. CROSAS: Ask him to get the papers.

Q. Do you remember what the terms stipulated for payment was in the contract?

A. I don't recollect.

Q. Do you remember whether it was a long or a short time?

A. I don't recollect the term, it was several years ago but it is specified in the instrument.

Q. How long before the firm went into liquidation the first time was this loan made of $40,000?

A. About four years before it went into liquidation.

Q. Did it become due before the liquidation?

A. I cannot recollect whether it was due or not; I recollect that more or less it was made four years before the firm was put into liquidation.

Q. Would the books show at the time this loan was made how much assets the firm had at that time?

A. Yes.

Q. Was it customary for you to take an inventory.
167 A. Every year.
Q. About what time each year?
A. March, April or May, I had no fixed time to take an inventory.
Q. Was Munsuris secured in any way for the accounts and credits which he contributed to the firm?

Mr. HORD: I object to that because I never heard of a partnership where two or more people put in money where they secured each other.

Q. Do you remember what interest or what proportion of the profits Munsuris received for the capital which he contributed?
A. I do not recollect the percentage but it appears in the instrument of partnership.
Q. That continued the same in the original society and down through the firms that were prorrogated?
A. It varied.
Q. Do you remember why it varied?
A. Because in one of the partnership agreements the part I was to receive as managing partner varied.
Q. At the time of his making this loan of $40,000, did his interest increase or decrease at that time; was there any prorrogation of the firm at that time so that his interest increased or decreased?
A. No, it continued to be the same.
Q. Do you remember whether the firm expired and was prorrogued or not?
A. I am not certain whether at that time there was a prorrogation.
Q. Where is Munsuris at this time?
A. Bilbao.
Q. He is a Spaniard, isn't he?
A. Yes.
Q. Where does he have his residence?
168 A. 39 Gordoñes Bilbao.
Q. How long has he been away from Porto Rico?
A. More or less three years.
Q. Does he know about the firm being put into bankruptcy?
A. I don't know whether he knows today, but I think he does.
Q. Did you write him to that effect?
A. Yes, I wrote him to that effect.
Q. Did you write him before or after the petition was filed in bankruptcy?
A. At the time I went to present it, I think. He has an agent here for this purpose and he was also notified.
Q. What is that agent's name?
A. Wenceslao Bosch.
Q. Have you heard from him since?
A. No, about this matter, not.
Q. Has Munsuris any other property outside of his interest in this firm in Porto Rico?
A. He has other houses which are the ones which are mortgaged to the American Colonial Bank to secure the $40,000, referred to.

Q. Has he any fincas?
A. I don't know whether he has country places or not, he has property in town which is mortgaged to the Colonial Bank.
Q. Do you know of any others?
A. He had other properties but I don't know now if he still has them here; he had different agents and they may have sold them.
Q. What are their names?
A. Mr. Wenceslao Bosch is his agent. There was another agent but his power of attorney has been revoked, and I am also his agent for the purpose of the managing of these houses. He has country property and houses in town of which I am the agent.
Q. Where is this rustic property?
169 A. Two or three places in the island, I cannot remember at this moment the exact places.
Q. But you are his agent for these same places, are you not?
A. I hold his power of attorney, but as I live out of town there is an agent here in town, José Ma. Peña who has charge of collecting the income from said property.
Q. Do you know whether he has had them long or not?
A. He has had them for some time, but not long.
Q. And you don't know where any of them are?
A. I spoke of the country properties. I do not know where any of them are. They are none of them of any importance, they hardly pay any rent or income.
Q. Well did you have all your property in this firm?
A. All of them.
Q. Then you yourself are personally insolvent?
A. I make my living at present working on salary for Mr. Carlos Ereño.
Q. Then you have no other property?
A. Unfortunately not.
Q. Do you know whether Munsuris intends to return to Porto Rico or not?
A. I don't know, it is difficult to know.

Mr. HAWKINS: I have nothing else.
Mr. HORD: I have no questions.

Witness retires.

The meeting is continued until such time as the Referee can obtain from Mr. Bosch all the books, papers, etc. in this matter. Mr. Hawkins and Mr. Hord will then be notified so that they may be present.

I hereby certify that the foregoing is a true and correct transcript of my shorthand notes taken at the time of the examination of José Truebas, bankrupt.

ANDRÉS B. CROSAS, *Referee.*
WM. M. MACKIE.

170 In the District Court of the United States for Porto Rico.

In Bankruptcy.

In the Matter of Succs. de Jose Hernaiz, in Liq., Bankrupt.

At San Juan, Porto Rico, this 11th day of May, 1907, before Andrés B. Crosas, Referee in Bankruptcy, was held the continuation of the first creditors' meeting in the above entitled matter. There were present Messrs. Wenceslao Bosch, Attorney for Julian Munsuri; W. H. Hawkins, Counsel for Heller & Long; and Henry F. Hord, Attorney for the Bankrupt. The Referee kindly consented to act as Interpreter.

Mr. José Truebas, being first duly sworn, was examined by Mr. W. H. Hawkins, Attorney for Heller & Long:

Q. As I have previously examined you somewhat in this case there are some questions that I will not need to go into at this time, having already covered them. But there are some things which were left untouched upon. Who was José Hernaiz, where did he live, and when did he die?

A. He lived in Barcelona, and died about 20—25 years ago.

Q. Did he ever live in Porto Rico?

A. Yes, a good many years ago.

Q. Well, about how many years ago did he live in Porto Rico?

A. About 28 to 30 years ago.

Q. Then it was only shortly before his death that he went back to Spain?

A. Some years before.

Q. Was he in business here?

171 A. He was a merchant here in San Juan.

Q. Where did he have his store?

A. He was the founder of the house of Sucesores de José Hernaiz. First it was José Hernaiz, then José Hernaiz & Co. and afterwards Succes. de José Hernaiz.

Q. Well, are you related to them?

A. I am his nephew.

Q. What relation was your comanditario partner? Julian Munsuri Hernaiz?

A. Blood nephew.

Q. Then what relation were you to Julian Monsuri?

A. I am a grand-nephew of José Hernaiz and a nephew of Julian Munsuri Hernaiz.

Q. How long have you been in business here in San Juan?

A. Some 26 years.

Q. Were you in business before or after José Hernaiz left for Spain?

A. He was in Spain when I commenced.

Q. Was Julian Munsuri in business here at that time?

A. Yes.

Q. Was he a partner in the firm of José Hernaiz & Company ever?
A. Julian Munsuri was a member of the firm of Hernaiz & Company that existed then and afterwards was a member of the firm of Succes. de José Hernaiz.
Q. Were there any other members of the family or relations of José Hernaiz that were in business here in San Juan?
A. There was another firm called Hernaiz & Company, but the relationship was very distant.
Q. Did José Hernaiz leave any children?
A. He had children, but it is some time since they have died.
Q. Do you mean to say by that that they died before he did?
A. Yes, his children died before he did.
Q. Did he leave any other nephews besides Julian Munsuri?
172 A. Yes, in Spain Particuiarly, he had a number.
Q. Did he leave any others here?
A. No.
Q. Well, were there any other near relatives of José Hernaiz here in Porto Rico outside of yourself and Julian Munsuri?
A. No, except that other family of Hernaiz whom I believe were very distant relatives.
Q. Why was the name Succs. de José Hernaiz adopted. Was it because it was sort of a family affair between you?
A. Just simply to continue the name of José Hernaiz.
Q. Well, did it include all of the successors, heirs?
A. No, they were simply relatives; each had his own capital; they were not heirs.
Q. What books did the firm of Succs. de Hernaiz keep?
A. The books that were required by the Spanish Commercial Code.
Q. Did you keep all of those required by law?
A. Yes.
Q. Did you keep a book of inventories and balances?
A. Yes, sir.
Q. Where is that book?
A. It should be there with the others, because I delivered all of the books to the liquidator of the firm when I went to the country.
Q. Who was the liquidator?
A. Mr. Bosch. While the balances and inventories were in a separate book nevertheless the balances and inventories were copied in the ledger.
Q. Did you keep more than one day book?
A. No, only one day book.
Q. Well, here is a "Diario." Are there any others?
A. Well, why, of course, before. As soon as we finished one journal we opened up another one.
173 Q. Well, where is the previous one to this one?
A. It must have been burned, because according to the Spanish law there was no need to keep a book for more than five years.

Q. Do you know of your own personal knowledge that it was burned?
A. Yes, I know that it has been burned.
Q. Who burned it?
A. The old representative of the house we had some years ago.
Q. Who was he, what is his name?
A. José Urrejola.
Q. Is he in Porto Rico now?
A. No, in Spain.
Q. When did he leave for Spain?
A. About 3 or 4 years ago.
Q. Did you see him burn the day book preceding this one?
A. I saw him burn all of the old books.
Q. Well, he burned them here in Porto Rico?
A. Yes.
Q. Then he burned that book at least 3 or 4 years ago?
A. Yes, some years ago, about four years ago.
Q. I suppose you recognize these books?
A. Yes.
Q. Will you kindly tell me when this book was opened?
A. In 1902.
Q. Then Urrejola burned this book in less than the 5 years?
A. It may have been a year more or less; I cannot say the exact year. I know that the book before this was burned, that it was before he went to Spain, and it was some 3 or 4 years ago.
Q. You said a moment ago that the book was burned because after 5 years had elapsed you had a right to burn the books according to law. Then why was it that the book was burned before the 5 years were up?
174 A. Perhaps at that date it did have 5 years; perhaps at the same time we found there was no use for it and burned it, that is all. Also for the reason that everything in that book was passed to this book.
Q. You must realize that we are speaking of the day book. When was this opened, this "Diario"?
A. February, 1902.
Q. Well, do the accounts previous to February 10, 1902, appear in any of these books?
A. Yes, because the balance which is shown in the day book and journal and ledger before this also appear in this final balance.

HENRY F. HORD, Attorney for Bankrupt: I suggest that for the purposes of this examination that it should be limited to the time in which — Heller & Long claim was originated, or the claim of Julian Munsuri. The question of the mortgage which Julian Munsuri gave to the American Colonial Bank is not in dispute in this matter as far as I can see.

W. H. HAWKINS, Counsel for Heller & Long: I will simply say in answer that everything is in dispute in this matter. I am examining a bankrupt, as any creditor has the right to do, in regard to his property, and I understand the law gives a creditor the right to a very

minute and careful examination of the bankrupt in regard to his property.

Q. Did you carry a book of minutes of the partnership?

A. No, it was not a "Sociedad Anónima."

Q. I did not ask if this was a "Sociedad Anónima." I asked if you carried such a book?

A. No, there was no obligation to do so.

Q. I did not ask if you had any obligation to do so, solely if you did carry such a book?

175 A. No.

Q. Did you have any other ledger previous to this one?

A. Yes, sir.

Q. Was that burned with the other books?

A. No, no other books exist except those books delivered to the liquidator upon the firm's going into liquidation.

Q. Well, did you turn over to the liquidator the ledger previous to this one?

A. No.

Q. It was burned?

A. Yes, sir.

Q. You deliver- to the liquidator all of your copy books?

A. All of the books that were left.

Q. Were any of those burned, any copy books burned?

A. Yes, I suppose so, because you can imagine that there were copy books for some 20 years there.

Q. Then you delivered to the liquidator only those books of recent date?

A. Those only which remained at the time of the turning over of the firm.

Q. Well, from what date did those extend?

A. The only thing I fixed my attention on was simply to deliver the books that remained there.

Q. Well, do you remember whether you delivered the last copy books, those for the year 1904?

A. I suppose those for 1904 were there.

Q. And 1903?

A. I suppose they are all there. I think it was in 1904 that the firm was liquidated.

Q. Did you deliver the copy books for the year 1903?

A. I suppose so; I am not certain. I delivered those books in use at the time.

Q. Well, I suppose the same is true—you are not sure—as

176 to the year 1902?

A. No, I am not certain as to the year; I delivered a number of copy books, but I am not certain of the dates.

Q. But those that you did deliver were of continuous dates, were they not?

A. I suppose so; I am not certain. All I know is that I simply turned over all of the books there at that time.

W. H. Hawkins, Attorney for Heller & Long: I would like to call the attention of the Referee to the fact that the first of these

copy books is dated the 3rd of March, 1902, and continues until the 27th of June, 1902; that the next copy book presented commences on the 27th of September, 1902, and continues until the 5th of January, 1903; the third copy book presented takes up where the previous one left off, January 5th, 1903; and continues until June 13, 1903; the next copy book, No. 4, takes up where the previous one left off, the 13th of June, 1903, and continues until the 12th of December, 1903; the last copy book takes up where the previous one left off, on the 12th December, 1903, and continues until the 20th of March, 1904, which was apparently the date of the termination of the firm. I especially call the attention of the Referee to the fact that we have a continuous record, then, from March 3, 1902, down to the end of the firm, with the exception of the date from June 27, 1902 to September 27, 1902, and I call the Referee's attention to the fact that it took just about that length of time according to the firm's business to fill one of these copy books, and that, therefore, one copy book is missing.

W. H. HAWKINS, Attorney for Heller & Long, continues with the examination:

Q. What did you do with your letters received?

A. Same as we did with everything else: when they were no longer needed we burned them.

Q. Were the books or papers of the firm burned at two
177 different times?

A. Letters were burned at different times and different dates. When no longer needed and found unnecessary, they were simply burned.

Q. When were the last ones burned?

A. I do not remember; some years ago.

Q. Was it after the termination of the firm?

A. Yes, some — after the suspension of payment which we had.

Q. Well, after the termination of the firm in February or March, 1904?

A. No, after that date I do not think so. I do not know; I was not here. Mr. Bosch and Mr. Urrejola were here in charge.

Q. Then you mean to state that there were no letters received in existence to day of the house?

Henry F. Hord, Counsel for Bankrupts, objects to the question. He just said that he did not know.

REFEREE: Objection over-ruled.

HAWKINS: As to the time that you know about, do you mean to say that there are no letters in existence?

A. I do not know whether there are any letters or not.

Q. Now, Mr. Truebas, when you went into this firm did you have any property yourself?

A. I had money; cash, but no property.

Q. And you put that all into the firm?

A. Yes.

Q. And I believe you testified on the former examination that you had nothing left?

A. Absolutely nothing; I have lived the past four years by being employed.

Q. And you lost it all in the firm's business?

A. Yes, I ceded everything to the firm creditors.

Q. Would you recognize the signature of Urrejola if you
178 saw it—Copy Book No. 4, page 366?

A. Yes, sir.

Q. Is that his signature?

A. Yes, sir, that is his signature.

Q. Now this letter speaks of a certain property in Caguas. While you were in active administration of the firm did it own any property in Caguas?

A. Yes, sir.

Q. Did the firm sell this property, to your knowledge?

A. Yes, sir; they did.

Q. When was it sold?

A. I know that it was sold, but I cannot give the date.

Q. By looking at the books could you tell?

A. I suppose they made the entry of the sale in the books, but I was not there at the time.

Q. So that it appears by the "Diario," page 399, that it was sold December 19, 1903, for $1,150.00.

—. ——.

Q. Did the firm own any "fincas" in Sabana Grande?

A. Yes, sir.

Q. How many?

A. I do not remember; I think there were two.

Q. Do you know if those were sold?

REFEREE: Mr. Bosch states that they were sold by him as liquidator.

Q. Is this your signature, showing letter in Copy Book No. 2 page 361, dated November 11, 1902?

A. Yes.

Q. When Don Julian was absent from San Juan did you act, more or less, as his agent?

A. Yes, I was, and am, a representative of his.

Q. Well, this letter speaks of a mortgage made by Don Juan Padio in favor of Munsuri?

A. That is a private letter which I wrote as an agent of
179 Julian Munsuri to a gentleman in Coamo, and it seems that the book-keeper made a mistake in copying it as if it were one of the firm's letters.

Q. Do you know anything about that mortgage?

A. I do not know what happened. He himself came here afterwards, and I do not know whether he sold it or not; it belonged to Julian Munsuri particularly and not to the firm.

Q. Yes, the letter itself says that. The firm had several stores; will you please tell the Referee what stores they were?

A. They had one in Arecibo; one in Utuado and 3 retail and the establishment itself in San Juan.

Q. What became of the store in Utuado?

A. It was abolished. Also the Arecibo store.

Q. Were they abolished by the firm?

A. They were closed up by the firm.

Q. Well, what became of the three stores in San Juan?

A. Those three stores were sold to Julian Munsuri in part payment of the loan made by him to the firm.

Q. The accounts of capital that are entered in this ledger are carried over from the previous ledger?

A. Yes, sir.

Q. And what was the capital put into the firm by Munsuri?

A. I have replied to that on the former examination.

Q. No, you did not, because an objection was made that it would appear in the partnership contract.

A. I do not remember.

Q. Can you say, more or less, what it was?

A. I do not remember now.

Q. Was it $100,000.00?

H. F. Hord, Attorney for Bankrupt, objects on the ground that it appears on the books.

Q. Well, did you ever have more capital than appears here in the books?

A. The firm of Succs. de Hernaiz, no. The books show the
180 losses and gains; there were years when we made gains and others when we made losses.

Q. In any of those years since 1900 did you ever have a capital of $195,000.00?

A. I do not remember.

Q. Do you remember at any time of having had such a capital?

A. I do not remember the capital we had. All I remember is that I put about $18,000.00 or $19,000.00 in that business and have never taken twenty-five cents out of it.

Q. Then, of course, you know the capital that Don Julian put into the business?

A. At that time, of course, I knew, because I had the books in my hands and saw the entries.

Q. You do not remember it now?

A. No.

Q. During your recollection did Succs. Hernaiz ever own a coffee plantation worth $25,000.00 or $30,000.00?

A. No, perhaps 25,000 cents.

Q. Well, in those stores that he had here in San Juan did they ever carry a stock worth $50,000.00 all three of them?

A. No.

Q. Are you sure that they never had as large a stock in all three of them as $50,000.00?

A. Yes, I am sure they never had that sum.

Q. Do you remember every having an interview with a representative of R. G. Dun & Company, the credit firm?

A. I do not remember.

Q. Do you know, or can you say, whether you ever represented to any one that you had a capital in 1901 or 1902 of $195,000.00 a coffee plantation worth from $25,000.00 to $30,000.00 and that the three stores carried a stock of $50,000.00?

A. No.

Q. You are sure that that was never done?

181 A. I am sure that I know nothing nor have ever heard anything of that.

Q. Did you ever make this representation in 1902 or 1902:

Accounts due	$65,000.00
Stock in the three stores	125,000.00
Mortgages	25,000.00
Cash	10,000.00
Total	$225,000.00
of which the firm owed	30,000.00
Leaving a net capital of	$195,000.00

A. No, never. I have never spoken to the representative of Dun & Co.

Q. Well, would such a statement as that be true, if made?

A. I have never spoken to any representative from the States.

Q. Was that the condition of the house at that time, or not?

A. I cannot say exactly. At the same time I remember regarding the mortgage, that is true, but as regards the stock I do not remember.

Q. But did you not say a few moments ago that you did not have even $50,000.00 in the stores?

W. H. HAWKINS, attorney for Heller & Long: I would like to call to the attention of the referee that Mr. Bosch, representing Mr. Munsuri, a creditor, has no right to prompt or advise the bankrupt.

A. No, in those three stores such a stock never existed.

Q. Then it would be surely true, would it not, that they never had $125,000.00 in them?

A. Stock in trade, no, never had that amount.

Q. Did you not say, also, a moment ago that they did not have a net capital of $195,000.00?

A. No, I have not stated here what was the capital, because I do not remember what was in the books, but what I did state is that I have never said to the representative of any firm that

182 the firm had a capital of $195,000.00.

Q. I know that, but I want to get at whether or not it was true, if the statement had been made?

A. I could not say whether it was or not unless I had seen the books.

Q. Do you know of any body connected with Succs. Jose Hernaiz

that ever made any representation or talked with a representative of R. G. Dun & Co.?

A. I do not know.

Q. Do you know whether anybody did or not?

A. No, I am completely ignorant of anything of that sort. All I do know is that when a representative of Heller & Long came here from the States I talked with and bought some goods from him.

Q. Did you make a statement to anybody as to the capital of the house being $195,000.00?

A. I do not know; I do not remember.

Q. Well, if it had been so, you would have remembered it, would you not?

A. Yes, if I had said it it would have been the truth.

Q. Well, cannot you refresh your memory in any way as to what the stock was outside of anything that you ever said; whether or not the house had a capital of $195,000.00?

A. I cannot remember now, but the books would show and the statement presented to the Court.

W. H. HAWKINS, attorney for Heller & Long: I would like to call to the attention of the Referee that it does not appear anywhere in the books as to what the capital was in those years.

Q. Did you ever talk with Eduardo Sainz about the situation of the house?

A. After the suspension of payments.

Q. But not before?

No.*

A. Yes, before, I did, when I bought goods from him.

183 Q. Did you ever make any representations as to the capital or resources of Succs. Jose Hernaiz?

A. I do not remember of his ever asking me anything in regard to it.

Q. I want to know if you ever made any representation to that effect?

A. I do not remember.

Q. You said a little while ago that you were poderado and are still poderado of Julian Munsuri?

A. Yes.

Q. For how long has that been?

A. For many years.

Q. Well, before your firm went into bankruptcy did Munsuri have any property?

A. Yes, the property which he afterwards mortgaged to the Colonial Bank in order to loan us the money.

Q. Well, was he a wealthy man before the house suspended payments?

A. He had enough to live on.

Q. Did he have more property than those three houses that you have spoken of?

[* In pencil in copy.]

A. No, today that property which figures as belonging to Munsuri part of it was an inheritance of a minor daughter of his and he had to make a petition of necessity and utility to the sale of the same so as to guarantee the loan which previously had been made in the Spanish Bank. This loan was liquidated, and subsequently a loan was made by the Colonial Bank of $40,000.00, and these three houses mortgaged to guarantee the same.

Q. Is it not the truth that Munsuri after the house went into suspension of payments had more property than he had before?

A. More capital? No, I do not think he could have had.

Q. Well, you are his agent, don't you know?

A. The only thing I can state is that he had less capital than before.

184 Q. Well you testified on the first examination that he was still the owner of several "fincas rústicas." Is he still owner of them?

A. Yes.

Q. Well, when did he get them?

A. Some time ago.

Q. How long ago?

A. I cannot say; I would have to get the deeds.

Q. Where are those deeds?

A. In the Notary's office.

Q. Did you act as his agent in buying those properties?

A. In some instances, yes.

Q. Please tell just which ones they are. Mention them.

A. I do not remember now; I know there were different ones.

Q. Were there any in Utuado?

A. I would have to look at the deeds.

Q. Have you copies of the deeds?

A. No, that is the reason I would have to go and get them from the Notary's office.

Q. What Notary?

A. Guzman Benitez.

Q. Are all of them contained in the office of the Notary, Gu-man Benitez?

A. Yes, all of them.

Q. And he acquired those sometime before the house went into suspendion of payments?

A. Before the adjudication in bankruptcy.

Q. Well, did he acquire any of them between the date of the suspension of payment and the date on which the house went into bankruptcy?

A. Yes, some.

Q. Which ones were they?

A. I do not remember. Cannot say without the documents.

185 Q. Are they also in the office of the Notary, Guzman Benitez?

A. Yes, all of them.

Q. Did Munsuri at that time, before the suspension of payments, own stock in any of these banks?

A. He did not have, nor has.

Q. Did he own any mortgages on any property here in the Island?

A. I just saw one here a moment ago; I do not know whether he has it now or whether he has sold it (referring to Letter Book).

Q. Did he have any others?

A. I don't know; only remember that one because I saw it, now. While he was in Porto Rico he administered his estate.

Q. Well, is it not true that you are now collecting rents or interest on mortgages belonging to Munsuri?

A. No.

Q. Who collects the rent from the country properties and the city properties?

A. José Maria Peña.

Q. Is José Maria Peña the representative?

A. He is a representative, but has no power of attorney.

Q. From whom is that authorization, from you as power of attorney or from Munsuri himself?

A. He had this authorization, from my predecessor in the administration of the estate of Munsuri, and now he has the same authorization from me to collect.

Q. Well, who was your predecessor?

A. Antonio Zomoza.

Q. Where is Zomoza?

A. In New York. He lives in San Juan, but is in New York just now.

Q. He is the managing partner of Succs. de Orcasitas?

186 A. Yes.

Q. It was to Orcasitas, was it not, that Munsuri sold the three stores here in San Juan?

A. Yes. I do not remember whether two or three, but the stores that he had.

Q. Was Zomoza the managing partner at that time of Orcasitas?

A. Yes.

Q. Who remits the rents to Munsuri, you or José Maria Peña?

A. Sometimes I send them; sometimes he sends them.

Q. About how much do they amount to per month?

A. It is according to the discounts that I have to make; sometimes I have to discount the interest on the mortgage, and then expenses, etc. The amount differs.

Q. Well, between what sums does the difference range?

A. I cannot say.

Q. Well, how much does the house No. 32 San Francisco Street produce?

A. I would have to see the stubs of the receipt book to find out. I know what they pay in the different apartments, but I do not know the total amount.

Q. Have you this receipt book?

A. Peña has it.

Q. Please tell me: you say you know what they produce in the various apartments, tell me what those sums are?

A. No, I would have to look at the stubs of the receipt book to find out exactly. I am not the one who makes the collections.

Q. Well, did Munsuri at the time of the suspension of payments have any capital besides the rents from the properties he owned in San Juan and in the country?

A. No, I only sent him the rents of the houses in San Juan. The farm lands never produced any rent.

Q. Who is in charge of the farms?

A. I do not remember who is it. They were practically abandoned and produced nothing.

187 Q. Well, would José Maria Peña be able to say who is in charge of those properties?

A. No, he does not know anything at all about them.

Q. Will you please explain, then, if Munsuri had no property beyond those properties in real-estate, how it was that he bought in the credits of the various creditors of José Hernaiz when they went into bankruptcy?

A. He will know about that.

Q. You do not know where he got the money?

A. I was in the country, and, of course, he in San Juan knew more about it than I did.

Q. I will call your attention to the fact that it was in 1903 and that you were in San Juan according to your previous testimony.

A. Yes, I was here. I lived in San Juan, but went into the country for days at a time. In 1903 the suspension of payments was made; they called a meeting of creditors and they appointed some one to take charge of it and I retired from the house.

Q. The books here say that it was $34,000.00 that he paid out. Are you sure that you do not know where he got that $34,000.00?

A. He will know that. No, the one who will know that will be him, but I do not know.

Q. As a matter of fact, did not Succs. José Hernaiz furnish it to him?

A. He had bought some goods of Succs. José Hernaiz and with those same credits he paid off that debt that he owed.

Q. Well, do you mean to say, then, that the house of Succs. José Hernaiz sold him merchandise (Munsuri) with which he bought these credits?

A. No, we sold him goods.

Q. Well, what goods?

A. What ever there was in the wholesale store.

Q. How much did that amount to, about?

188 A. I do not know.

Q. That was before or after the suspension of payments?

A. It was not only after suspension of payments, but also after the meeting of creditors.

W. H. HAWKINS, Attorney for Heller & Long: I would like to call the Referee's attention to the fact that that entry does not appear in the book under Munsuri's account.

Q. Did he buy those credits for the account of the firm, then?

A. No, we afterwards bought those credits from him for the same price.

Q. And you paid him in merchandise out of the store?

A. No.

Q. When were those three stores turned over to him. Before the suspension of payments?

A. The books show they were bought on March 7, 1903, for $23,180.14.

Q. Then Munsuri bought up these accounts and was credited with the amount he paid on the books of the firm to square his account, is that true?

A. I do not know whether it was in the same price in which he bought them. We afterwards bought them from him.

Q. Did you not know that he was buying those credits?

A. I knew it when he bought them.

Q. Did you not know that he was thinking of buying them?

A. No, I was not here.

Q. Do you know how much rent Succs. José Hernaiz paid Munsuri for the store?

A. It is on the books.

Q. But do you remember it?

A. No. At different times there were different sums paid.

Q. In the books of accounts here it appears that the personal expenses of yourself and of Julian Munsuri are kept here in the accounts with the house. Does that mean that the personal
189 expenses of either yourself or Munsuri were paid by Succs. José Hernaiz and then charged to the account of each one, whoever it might be?

A. Yes, mine particularly; whatever I took was charged to my account, and whatever he took was charged to his account.

Q. Well, did Succs. José Hernaiz never pay any of the private or personal expenses of Munsuri and then charge it to his account?

A. Julian Munsuri lives in Spain; how were they going to pay his private expenses?

Q. I want an answer; yes or no?

A. While he was in Porto Rico he took money from José Hernaiz and it was charged to his account.

Q. Did the firm of Succs. de José Hernaiz ever pay directly the personal accounts of Munsuri?

A. No.

Q. Then, will you please explain to me why the personal expenses are entered up here as having been paid by Succs. Hernaiz?

A. I do not remember.

W. H. HAWKINS, Attorney for Heller & Long: I certainly object, Mr. Referee, to Mr. Bosch's prompting the witness. He is the attorney for a creditor.

Q. Did at any time, or was it customary ever, for Succs. de José Hernaiz to pay accounts against Munsuri presented at the store and then charge to Munsuri's account?

A. All accounts that were sent were paid. Whenever they had his approval they were paid and charged to his account.

Q. The same is true of your account, is it not so?
A. Yes, there is this all in detail.
Q. Then this account of Munsuri's shows in detail those payments?
A. Yes.
Q. Did Munsuri have a monthly allowance from Succs. de José Hernaiz?
190 A. Monthly, no.
Q. How was he paid his share of the profits of the firm?
A. Nothing was ever paid to him; he never took anything out of the firm, for the simple reason that there were nothing but losses.
Q. Did he never receive any dividends?
A. No.
Q. Then, you mean to say that he drew against his account?
A. No, no dividends have ever been paid by the firm.
Q. Well, did he not draw against his account and then later on the interest on his investment was credited up to him?
A. Some balances may have been made.
Q. Well, when those balances showed profits were they not charged up?
A. There have been balances that showed losses.
Q. Were there never any balances that showed profits?
A. Yes.
Q. Well, how were those profits paid to him?
A. I do not remember.
Q. Do you remember whether it was not customary for Munsuri to draw against his account with Succs. José Hernaiz and then later on when the dividends were declared they would be credited to him?
A. Generally, no; it may have been done some times, but not as a custom.
Q. Well, do you remember the balance?

Meeting declared adjourned until Monday afternoon, May 13, 1907, at 1:30 P. M.

191 In the United States District Court for Porto Rico.

In Bankruptcy.

In the Matter of SUCESORES DE JOSÉ HERNAIZ, in Liq., Bankrupt.

Continuation of first creditors' meeting, held before Andrés B. Crosas, Referee in Bankruptcy, this 13th day of May, 1907, at 1:30 p. m. There were present: Wenceslao Bosch representing Julian Munsuri, a creditor; Henry F. Hord, attorney for the bankrupt; W. H. Hawkins, counsel for Heller & Long; Mr. Geigel, the Court Interpreter.

Mr. José TRUEBA, being first duly sworn, was examined by W. H. Hawkins, attorney for Heller & Long:

Q. Mr. Trueba, there were several things left over from last Saturday afternoon that I would like to ask you. You said that the

stores in Utuado and Arecibo were abolished. What became of the books of those stores?

A. I do not know what became of the books, inasmuch as the real book-keeping was done in the large books in San Juan. The books kept in those stores were merely note and annotation books.

Q. Was there no regular "Diario" for each store: the one in Arecibo and the other in Utuado?

A. No, sir, all they kept was ordinary copy books; they did not keep a regular set of books.

Q. Did not they keep a regular ledger in each store?

A. No, sir, because they were branches of the San Juan store and the real book-keeping was done in San Juan.

192 Q. As a merchant did not you know that the law required a branch-store outside of the town where the main-store is located to keep books also?

A. In the event of the branch-stores having business outside of the main-office then it would be necessary to keep a set of books, but inasmuch as these branches did business only with the main-office in San Juan it was not necessary for them to keep a set of books.

Q. Did they not sell merchandise to any one who would come in and buy it from them?

A. Yes, sir, for cash. They did no credit business.

Q. You said also Saturday afternoon that Urrejola burned the books of the establishment here in San Juan?

A. The old ones.

Q. He was the attorney-in-fact of the house, was he not?

A. Yes, sir.

Q. By whose orders did he burn those books?

A. I do not know; by the instructions that he may have had.

Q. Did you give him any instructions?

A. I do not know.

Q. Well, had Mr. Urrejola been in business very long; was he well acquainted with business methods?

A. He had been a regular counter-clerk. I do not know whether or not he was familiar with business methods.

Q. Well, he had been with you a good many years, had he not?

A. Yes.

Q. Who was your book-keeper here in San Juan?

A. Enrique Garcia.

Q. Where is he now?

A. I do not know.

193 Q. Have you not heard from him and do you not know, as a matter of fact, that he is in Aguadilla?

A. No, I do not know if he is there or not.

Q. Well, was Enrique Garcia the book-keeper all of the time you were there?

A. Yes.

Q. Do you know who kept the books after Enrique Garcia left?

A. Jose Urrejola.

Q. He is the same man who burned the books, is he not?

A. Yes, sir.

Q. Would you recognize Urrejola's writing if you saw it?
A. Yes, you have already, the other day, shown me some of his signatures and I recognized them.
Q. Well, will you please look at the "Diario"—step forward—is this Urrejola's hand-writing? (Showing "Diario," page 399).
A. Yes.
Q. Is it the same hand-writing on through?
A. I do not know; there are a number of others; the liquidator could tell you.
Q. Well, is this Urrejola's hand-writing?
A. Yes.
Q. And this?
A. Yes.
Q. And this?
A. Yes.
Q. Also down to page 411 (Showing "Diario," page 411)?
A. Yes.
Q. Do you know whose writing this is (Showing "Diario," pages 412 to 419)?
A. That hand-writing may be identified by Mr. Bosch.
Q. Whose hand-writing is this?
A. That is Garcia's handwriting.
194 Q. Is it all the same (begin-ing of book to page 398)?
A. Yes, sir.
Q. You said that Julian Munsuri was a former partner of the firm of Hernaiz & Company?
A. A good many years ago.
Q. Do you know if he was a general or a special partner?
A. I do not know.
Q. With whom did Succs. de Jose Hernaiz do their banking business?
A. With no one.
Q. Did you have no regular bankers?
A. Well, regular banking houses we did not have. Of course, we did business with banks. For instance, when we secured credits or loans, or something of that kind, but such a thing as having a regular bank in England, or Germany, or any other country, we did not have.
Q. What was the bank here in San Juan that you usually did business with when you got loans or deposited moneys?
A. The American bank and the Spanish bank, also in the Agricultural bank.
Q. Did you carry a banking account or a credit in both of those banks?
A. Whether or not we had an account with both banks at the same time I do not know, but I do know that we had accounts with them.
Q. Is that your signature (Showing letter in Copy Book No. 2, page 156)?
A. Yes.
Q. Who was "D. M."?

A. That signifies "May it Please God."

Q. When you and Julian Munsuri started the firm how was the capital of Julian Munsuri contributed?

A. With the stock of the house which had belonged to him.

195 Q. And any credits?

A. Yes, sir.

Q. Was the merchandise and credits appraised in the form required by law?

A. Yes, sir.

Q. Who were the expert appraisers?

A. I do not know; it was so many years ago that my memory fails me.

Q. Is their appraisement entered up in the book of invoices and balances that you delivered to the liquidator?

A. It could not be, for the reason some 18 or more years have elapsed since then and the liquidation or balances of stock that may exist now are those recently made.

Q. Well, has the firm of Succs. de José Hernaiz continued for 18 years?

A. More than that; at least 18 or 20 years, in one form or another. That house was founded in 1886.

Q. I am referring to the last firm, Succs. de Jose Hernaiz?

A. Yes, that same firm has been since the year 1886 in existence with different partners.

Q. Well, has Julian Munsuri been a partner all of that time?

A. Yes, sir, both an active and a special partner.

Q. Well, when he became a special partner, along about 1895, were not the goods and credits which he contributed appraised at that time?

A. Yes, they were.

Q. Was that appraisement entered up in the book of inventories and balances?

A. That is in the books.

Q. What books?

A. In the books for those years, if they are in existence.

196 Q. Well, was it not entered up in the book of inventories and balances?

A. Yes, sir.

Q. And that is the same book that you delivered to the liquidator?

A. No, because at that time the liquidator had no right to that book.

Q. Well, but it was the same book, was it not, that you later on delivered to the liquidator?

A. I say again, what I said before, I do not know whether that book was of the date of the books which were delivered to the liquidator, or if the date of it was prior to it.

Q. You said Saturday, and on your previous testimony, that Munsuri made the loan of $40,000.00 to the firm in order to save the firm?

A. Yes, sir.

Q. What was the condition of the firm at that time? Was it losing money or gaining money?

A. There was no liquidation made of the firm at that time, so I do not know whether it was losing or gaining.

Q. If there was a liquidation at that time, would it be in the books?

A. I suppose so; if the balance was taken, yes, sir.

Q. Do you remember whether any dividends were declared at that time or not?

A. I do not remember.

Q. Showing him the Day Book, pages 97 to 104—If you look at the entries can you tell whether or not a balance was made at that time, in June, 1902?

A. If I make an examination of the books I could.

Q. Well, examine them and see. Well, look at this entry, on page 104, in regard to losses and gains on June 27, 1902;
197 tell whether a balance was taken or not?

A. I was absent at that time and do not know whether the attorney in fact took it.

Q. Well, how do you remember so well that you were absent on that date?

A. I remember it because most of the month of June of that year I was in New York.

Q. Do you remember whether this balance that you refer to was made before you left?

A. I was away on that date, June 27.

Q. How long were you absent in New York on that trip?

A. I cannot tell you accurately, but 15 or 20 days, more or less.

Q. Look at this entry on page 104, will you tell me whether a dividend was declared according to that entry?

A. Did not I tell you before that I was away from the Island on that date? I do not know whether the attorney in fact at that time declared dividends.

Q. Well, would the attorney in fact have any power to declare dividends?

A. Yes, he had a general power from the firm just as if he was one of the partners.

Q. Did that power include the right to declare dividends to the two partners, the special and the general partner?

A. He had power to conduct business there or to manage the firm just the same as if he was one of its partners.

Q. I want you to tell me, yes or no, whether he had the power to declare dividends or not?

A. That is why I say to you that he had sufficient power to conduct the management of the firm. I do not know under what terms; that could be told by the power of attorney.

Q. Who gave him that power of attorney?

A. I think I did, because I was the only general partner.

198 Q. Was Munsuri here on that date?

A. I think so.

REFEREE: What does that entry signify (page 104)?

A. That a division has been made of the profits made by the partnership.

Q. You were absent on the date of that division, were you not?

A. Yes, sir.

Q. Did not know anything about it?

A. No, sir, the firm continued doing its regular business in the ordinary ways, so that it did not come within my knowledge or observation.

W. H. HAWKINS, Attorney for Heller & Long: Do you know whether you received that credit or not as your proportion of the profits?

A. I suppose I did, because according to the books it is placed to my credit on that account.

Q. Now, Mr. Trueba, did you know anything about the negotiations of Julian Munsuri in buying in the credits of the various creditors after the suspension of payments?

A. I know nothing about as to how he purchased them.

Q. Were you not cognizant of the negotiations at any time?

A. I was not. We found out that he had made those purchases because we afterwards purchased those credits.

Q. That is not what I asked you. What I asked is whether you were cognizant of the negotiations at any time?

A. I said to you before that as to that I know nothing about it.

Q. Are you sure that you never talked to any one about it?

A. Yes.

Q. Were you here during that time?

A. Well, at the beginning of the suspension of payments
199 A. I was here, but afterwards I went away to the interior of the island. I do not know if I was here when he made those purchases, or purchased those credits, because I was both here and in the island at that time alternately and I do not know whether I was or not.

Q. Well, you have already testified that you were here during the year 1902-1903, have you not?

A. Yes, sir, in 1902 and at the beginning of 1903.

Q. About when was it that you resigned the active administration of the firm?

A. After notice was served on creditors to attend a meeting and in view of the failure to held such meeting I put a man in charge of the business approximately a month later.

Q. About when was that?

A. I think it was a month, more or less, after failure to get the creditors together to hold a meeting when I resigned and put a man in charge.

Q. When was that?

A. In 1903. I think it must have been in April or May.

Q. I will show you a copy book here (Copy book No. —, page —). Is this your signature?

A. Yes, sir.

Q. What date is that letter?
A. This one, June 18.
Q. Were you in active charge of the firm up to that time?
A. I was still so.
Q. Then it was in June, 1903?
A. I do not know if it was in that month, it may have been a month later or sooner.
Q. Well, look at this copy book and see if you did not sign all of the letters and know if you were not in active charge of
200 the firm?
A. He points to page 28 where he finds the signature of the attorney in fact.
Q. Are all of these up to that date your signatures?
A. Yes, all of these are mine.
Q. Well, then, can't you fix the date when you resigned active charge of the firm?
A. The date on which I absented myself was on June 19.
Q. Can you tell when the payment on the $40,000.00 loan of Munsuri's were made?
A. I could not give you the exact date. They appear on the books.
Q. Well, was it before or after the suspension of payments?
A. The loan you mean?
Q. No, the payments?
A. They were made both before and after.
Q. Well, when was the first payment made then?
A. Before the suspension.
Q. And what was that sum, about?
A. I do not remember, it is in the books.
Q. Well, was it not the sale of the three stores here in San Juan?
A. Yes, sir. it was the sale of the stores, but I do not know the amount.
Q. About when did that take place?
A. I do not remember; the books show it.
Q. When was that loan of $40,000.00 due?
A. I do not remember.
Q. Was there a fixed date?
A. I do not remember, either.
Q. Well, would the deed show it?
A. Yes, I suppose it would.
201 Q. Would you be able to tell from the deed?
A. Yes, if the deed says so.
Q. Showing witness the recognition of the debt made by Succs. de José Hernaiz and Julian Munsuri Hernaiz on June 17, 1902,—can you tell from that?
A. This credit according to this paragraph headed "Declaration de Vencimiento" was due the moment the deed was made out.
Q. It was due on demand, then, was it not?
A. Yes, on demand, according to the terms of the deed.
Q. Will you please tell me, then, why it was that you waited until some months after the loan before making a payment on this mort-

gage and then just previous to the suspension of payments made this payment by transfer of the three stores?

A. For the same reason that I paid other creditors their accounts in cash.

Q. Did you pay all of the other creditors in Cash?

A. In cash; all the cash that I collected was distributed among the creditors.

Q. Were some of those the New York creditors?

A. Yes, sir. The New York creditors also have received money

Q. Well, did you testify in the District Court on the trial of the case for suspension of payments?

A. I do not remember.

Q. In the suspension of payments?

A. I do not remember.

Q. Do you not remember testifying there that you made that payment because it was convenient to do so?

A. I do not remember; I know that after the suspension of payments I testified in the District Court, but what I testified, I
202 do not recollect.

Q. As a matter of fact, at the time that that transfer to Munsuri was made, was not the house, or the firm, rather in such a condition that it could not pay its debts?

A. I do not know, but the proof that they could pay at that date is that the payments were made.

Q. You remember that the payments were made?

A. Yes, sir, payments were made.

Q. Who paid the interest on that loan—that is, to the Bank?

A. Sucesores Jose Hernaiz. Inasmuch as interest had to be paid to Munsuri instead of paying to him payment was made to the bank at the beginning; afterwards every one paid his own debts.

Q. Now, tell me was it not, as a matter of fact, true that the so-called loan was in reality merely additional capital to save the firm?

A. That amount was a loan he made to the firm with a view to helping it along, coming to its rescue.

Q. I want you to tell me yes or no, whether it was additional capital furnished under the guise of a loan?

A. It was not disguised capital or additional capital. It was a regular loan made to the firm under the obligation of being returned

Q. Will you please tell me how Munsuri protected his interest as a special partner in the firm?

A. By the confidence or faith he had in the active partner in charge of the business.

Q. Was he not present to watch the transactions almost every day?

A. He may have been there once in a while, if he wanted to but he was under no obligation to be there.

Q. Did he ever look over the books?

A. I never saw him.

Q. Did he have the right to do so?

203 A. As a special partner his only right was to look at the trial balances, made annually I believe.

Q. Well, did not your partnership agreement give him the right to look at them whenever he wanted to do so?

A. I do not remember; perhaps it did.

Q. As a matter of fact, was not Julian Munsuri present, working there in the store and selling goods at different times?

A. I do not remember having seen him during the time I was there.

Q. As a matter of fact, did he not get by agreement between you an allowance for his work?

A. I do not remember.

Q. Well, if there had been, would you not remember it?

A. I think so.

Q. What allowance did you receive for your work monthly?

A. The amount appearing in the partnership articles.

Q. Well, if the articles of partnership show or gave the right to Munsuri to receive a monthly allowance did he receive it?

A. I do not remember.

Q. Would the books show whether he did or not?

A. If he did receive such amounts the books will show it, because no transactions were made without being recorded on the books.

Q. Well, would the books show whether or not his account was overdrawn at any time?

A. I do not know if they would.

Q. Well, if it was a transaction of the firm would it not appear in the books?

A. Yes, all of the transactions of the firm appear on the books.

204 Q. How often was a balance and inventory taken?

A. Compulsory—once a year.

Q. Would those balances be shown in the books?

A. They ought to.

Q. You said a little while ago you went to New York in June, 1902. Did you go up there to make purchases from stores in New York?

A. I did make purchases.

Q. Can you fix the date when you went?

A. In the month of June; I do not remember the day.

Q. By looking at this letter, page 729 of Copy Book No. 1, can you fix the date more exactly?

A. Well, according to the date of this letter I was in San Juan during the month of June.

Q. But what day?

A. On the 23rd of June, 1902.

Q. And you have already testified that on the 27th of June you had already left?

A. It was in the month of June, but it seems that I do not remember the date exactly.

Q. Well, after you left who took charge of the firm?

A. Jose Urrejola, the attorney in fact.

Q. Were you also in San Juan on the 24th of June (Showing letter on page 732 and over)?

A. It seems that I was.
Q. Were you back here by September 1st?
A. I think so.

W. H. HAWKINS, Attorney for Heller and Long: I would like to have noted on the record the fact that it was during this time that the copy book which is missing, or that the copy book missing, covered this period of time absent, or while, rather, the witness was absent in New York and that the telegram at the end of Copy Book No. 1 is signed by Munsuri.

205 Q. Did Julian Munsuri ever go to the United States to make purchases?
A. He did once that I remember.
Q. When was that?
A. One of the years, I do not remember which one. He was sent there by me as any other employee.
Q. Was he, Julian Munsuri, acting under power of attorney.
A. No, he did not have any power of attorney. He had verbal orders.
Q. Did he have verbal orders to purchase goods in New York?
A. Yes, sir.
Q. Now, upon looking at this copy book, No. 2, which I am to show you, pages 343, 344, 348, 349, 351, 352, 353, 356, 359 and 360,—I want you to fix the date when Munsuri sailed?
A. According to these letters on November 10, 1902.
Q. When did he return?
A. I do not know; the letters do not say anything about his return; they speak only of his departure.
Q. Can you fix the date by looking at letter on page 633?
A. The letter says on Thursday of last week. That was written on December 22; you will have to find out what date that was. (The calendar shows that he arrived on December 18).
Q. Well, did he while he was absent make purchases of various New York firms?
A. Yes, sir.
Q. More or less, about how much did those purchases amount to?
A. I do not know.
Q. Was it not about $30,000.00 worth?
206 A. I do not know the amount.

W. H. HAWKINS, Attorney for Heller & Long: I would like to have noted on the record also that letters in Copy Book No. 2, pages 368, 392, 421, 443 and 515 show that Munsuri was absent in New York making purchases.

Q. Were those goods that he purchased at that time billed to the firm or billed to him?
A. No, sir, to Succs. Hernaiz.
Q. If you saw one of the bills would you recognize it?
A. If they are of that same date I would. They may be in the invoice book.
REFEREE: Where is the invoice book?

A. I do not know if it is in existence, but if it does exist it would be there.

Q. Well, did you turn over that invoice book to the liquidator?

A. I do not remember. Inasmuch as he was not going to make sales of merchandise I do not know if that book was turned over to him or not.

Q. Well, if it was not turned over to him it was destroyed, was it not?

A. If it does not exist it has been destroyed.

Q. Well, you do not know whether it exists or was burned?

A. I do not remember.

Q. Well, now, when Munsuri was absent on that trip in New York to purchase goods, did he select the goods himself?

A. He went there representing the firm just as any other employee of the firm would have done.

W. H. HAWKINS, Attorney for Heller & Long: I call attention to letter in Copy Book No. 3 dated January 5, 1903, on page 6,
207 to the American Trading Company, in which it says that he is selecting the quality of goods.

Q. Showing letter on page 18 of Copy Book No. 2, in regard to the firm's business?

A. That letter does not say anything.

Q. Look at the letter on page 632?

A. Yes, Munsuri put down in his book a purchase.

Q. Did he also note the prices of those articles, look at page 645?

A. Yes, sir, and also noted them down.

Q. Did he also decide questions of business policy?

A. Yes, that is, on that trip that I have alluded to before.

W. H. HAWKINS, Attorney for Heller & Long: I would like to have noted on the records in Copy Book No. 2, pages 394, 630, 633 and 636.

Q. Did he pay any bills of the firm (Showing letter on page 467 of Copy Book No. 2)?

A. Mr. Munsuri did not make the payment; he simply turned over a draft that he had. Succs. de José Hernaiz paid it.

Q. Do you know, showing letters in Copy Book No. 2, pages 469, 470, 471, 473, 478, 644, whether or not Munsuri visited all of those firms in New York?

A. Yes, sir, he did visit them.

Q. Would you recognize a card of Munsuri's if you saw it?

A. He had a number of cards printed in the printing office. What I will see on a card is his name.

Q. Have you ever seen any of his cards?

A. I have seen hundreds of them.

Q. Would you know his handwriting?

208 A. Yes, sir.

Q. Do you recognize that card?

A. It seems to be in his own handwriting, but it is not signed by him.

W. H. HAWKINS, Attorney for Heller & Long: I submit that card in evidence for what it is worth, to be proved later as to whom that card was delivered. It is proved that it is Munsuri's card, and that it is his handwriting. Exhibit "I"

HENRY F. HORD, Counsel for Bankrupt: This card does not appear to be addressed to anybody.

W. H. HAWKINS, Attorney for Heller & Long: I wish to say that it does not show on its face to whom it is addressed. I shall have to prove that by taking a deposition in New York, but I offer it now simply for what it is worth, to be proved later or to be connected up with Munsuri's business in New York. That is all.

HENRY F. HORD, Counsel for Bankrupt: I would like to ask Counsel if he proposes to prove that this card is addressed to his client—the one he now represents, or some one else?

W. H. HAWKINS, Attorney for Heller & Long: I do.

HENRY F. HORD, Counsel for Bankrupt: I object. This witness has admitted that he sent Munsuri to New York to buy goods for the firm. I do not understand that this card has any force, in that it is not addressed to any one, and I submit under the circumstances that it is not admissible.

W. H. HAWKINS, Attorney for Heller & Long: I want to say that I simply offer it now, to be connected up later on. It is proved that Munsuri was doing business in New York and I will later show the exact business house to whom delivered.

REFEREE: I will admit it conditionally, for the present.

W. H. HAWKINS, Attorney for Heller & Long, proceeds with the examination of the witness: Did the firm of Succs. de José
209 Hernaiz own any land in Ponce?

A. I do not remember of any.

Q. Well, did the firm sell any lands anywhere in the island to Victor Gurtierrez?

A. No, the fact is this: the firm had an attachment or lien on the property of Victor Gutierrez and it must have been a release or something of that sort, not a sale.

Q. Do you recognize this signature—Copy Book No. 5, page 194?

A. That is the signature of the attorney in fact of the firm.

Q. What was his name?

A. Urrejola.

Q. Did he have power to sign Munsuri's name personally?

A. Yes, because this is the telegraphic address.

Q. Was the telegraphic or cable address of the firm simply "Munsuri"?

A. Yes, sir.

Q. And all telegrams were signed in the name of Munsuri?

A. Yes, sir.

Q. Even though they had to do with the business of the firm?

A. Yes, sir, that was the cable address.

Q. Was it customary to sign the name "Munsuri" in telegrams without showing that it was signed by an attorney in fact?

A. Yes, sir, the name of the attorney in fact did not have to appear.

Q. Will you please tell me if this is the signature of Munsuri (Showing telegram on page 50, Copy Book No. 5)?

A. No, sir, that is the hand-writing of the attorney in fact of the firm.

Q. Copy Book No. 3, page 522, is this the signature of Munsuri?

A. That is the hand-writing of the bookkeeper.

210 Q. Whose signature is it?

A. That is not his signature; that is a telegram ordered be sent by me.

Q. To whom does it refer?

A. A man in Barceloneta; instructions to that man to go to the branch in Arecibo as a clerk. This telegram was sent to a man who is at Barceloneta directing him to go to the branch at Arecibo.

Q. And signed by the telegraphic address?

A. Yes, sir, by the name used by the firm.

Q. Was it customary for Munsuri to talk with business firms here in the Island about the business of the firm (Showing him letter on page 179, Copy Book No. 2)?

HENRY F. HORD, Counsel for Bankrupt: I object.

A. I do not see by this letter that he had such conversations or that he had any conversations.

Q. Well, read the letter?

A. It seems by this letter that the man in charge of this store said something to him; spoke to him about something. The man in charge of these stores made those statements.

Q. Did Munsuri ever go to Utuado or Arecibo to inspect the stores belonging to the firm there?

A. Munsuri, a number of times, has been to Utuado and Arecibo just for recreation trips, and he may have been in those stores.

Q. Well, did he never go there on business connected with the firm?

A. No, not that I remember.

W. H. HAWKINS, Attorney for Heller & Long: I call the attention of the Referee to a letter in one of these copy books which I will find later, the reference to which is now lost.

211 Q. Did Munsuri ever have control of the funds of the firm or have the free use or custody of them?

A. The safe of the firm has always been in charge of the manager or attorney in fact or some person placed in charge of it.

Q. Was the safe a key-safe or combination-safe?

A. It was both combination and key.

Q. Did Munsuri have the combination or key, so that he could open the safe?

A. Not that I know of.

Q. Did he ever buy drafts to pay debts of the firm?

A. Not while I was there, and I suppose he did not either when the firm was in charge of the attorney in fact.

Q. Did he never go personally and buy them with the money of the firm?

A. I do not remember that he did while I was in charge of the firm.

Q. Do you remember whether or not you remitted drafts to foreign houses through the house of Mullenhoff and Korber?

A. No, sir, we never sent money through that house; we always made our remittances direct.

Q. Did you not buy drafts from them?

A. I did.

W. H. HAWKINS, Attorney for Heller & Long: I submit your Honor the witness equivocates and I simply have to keep asking questions to get an answer.

Q. As a matter of fact, was not Munsuri most of the time in the store selling goods?

A. Not selling that I recollect.

Q. Do you know of any custom as a merchant here in Porto Rico whereby a special partner, or, rather, a general partner, allows himself to be reported here in Porto Rico as a special partner?

212 HENRY F. HORD, Counsel for Bankrupt: I object to that question on the ground of its being irrelevant and immaterial.

W. H. HAWKINS, Attorney for Heller & Long: In this examination I have to go very thoroughly into the acts of Munsuri.

REFEREE: Objection over-ruled.

A. As far as I am concerned, I have always considered the general partners as such and the special partners as such; I suppose that everybody else does the same.

Q. Did Munsuri ever negotiate the purchase or taking over the real estate for the firm?

A. Not for the firm, unless it was on commission from the firm.

Q. Is it not a fact that Munsuri, although a special partner, did everything at different times that was done by yourself as managing-partner. Everything, in fact, except the signing of the firm name. In other words, did everything in connection with the business of the firm except signing the name?

A. It is not true.

Q. Did he not do it under the guise of being commissioned as agent?

A. Well, if at any time he ever did such a thing it must have been on very rare occasions by order or instructions or commission of the firm.

Mr. LLOYD LYON, being duly sworn, is examined by W. H. Hawkins, Attorney for Heller & Long:

Q. Mr. Lyon, will you please state your age, name, occupation?

A. Age, 30; name Lloyd Lyon, occupation, accountant?

Q. For how many years have you been an accountant?

A. Ten years, consecutively, although I had experience
213 before while I was a student.

Q. Have you ever seen and examined this book, day book and ledger, of the firm of Succs. Jose Hernaiz?

A. I have, but I should like to qualify that statement by saying that the examination has not been as full as I would like to have had it. I have examined it sufficiently to get some points from it.

Q. That is all I want. Now, showing Mr. Lyon the ledger is it possible to tell from these books the amount of the capital possessed by the firm at any one time?

A. Yes, the capital is shown there on those books, but it is shown in rather, what I consider, a peculiar manner.

HENRY F. HORD, Attorney for Bankrupt: Are you familiar with Spanish book-keeping?

A. I have had very little experience with Spanish books, although I have made one rather th-rough examination of a corporation's books in Spanish.

Q. But generally speaking you are not familiar with Spanish book-keeping?

A. Well, I am not as familiar with it as I am with English.

Q. Well, now, you say those books are peculiar; do you mean peculiar as compared with other Spanish Books, or only as compared with American books?

A. What I referred to was peculiar as compared with the usual method of doing business among American merchants in the United States; but what I referred to in particular I am sure the theory here would be the same as in the United States. It would be the theory of debiting the partners with the capital paid in by them and not allow that account where they were debited with that capital to be kept as a running, open account in which all
214 kinds of charges and credits would be made. That would be unusual, I should think, in any language. It certainly is contrary to the standard methods of accounting in the United States.

W. H. HAWKINS, Attorney for Heller & Long: Proceed, then, with answering the question. Is it possible, then, to tell the amount of capital possessed by the firm at any one time by these books?

A. These books do not begin with the beginning of their business. There are books beyond these which I have not seen and which I would certainly want to see before making a final statement of this firm's business. The Balance in this ledger are dated April, 30, 1902. Their capital at that time according to this book was $48,508.11. It was, of course, a good many items. I should want to look into all of their books from the beginning of their business. This does not state how it was paid in, by whom paid, or what the offsets were against it.

Q. Then, you can't tell without seeing the previous books what the capital was previous to that?

A. No. The capital between April 30, 1902, and June, 1902,

was cut down from $48,000.00 to $39,000.00, and then again June 30 another entry was made bringing it down to $37,473.87, the balance on February 15, 1903.

Q. You have already stated that there was nothing to show in these books the original amount of capital paid in by the partners?

A. There is not.

Q. Was the capital account and the personal account mixed up?

A. They were in this way; the capital account in any system of book-keeping is always the same. It is a liability of the firm. The offsets against this capital were the amounts which the two partners were debited with. In these two accounts of these partners
215 were all kinds of charges. They were very active, open accounts, and I should want to make what I have not made, a very careful analysis of both of those accounts. In such an analysis I should want to make two very distinct divisions in these personal accounts. There are certain items which in a system of this sort it would be perfectly proper to run through an account of this kind. There are certain items which I should consider it improper to run through an account of that kind. I should not want to run in personal items. Of course, the capital is always a liability. The form of assets might change; the assets as paid in originally might be in cash; it might be the amount that his partner put in; or the form of assets might change again so as to be merchandise or real-estate. I should want to separate the accounts of these partners, which I have not done, into two separate accounts one showing the regular assets and the other the personal items that entered in.

Q. What is the effect of mixing up these personal accounts and capital accounts?

A. The effect would be in looking at the books in a casual, off-hand way that we might find an absolute balance; a trial-balance might show a balance, but it might be that one of these partners would have so many off-sets against the amount he put in of a personal nature as to have really withdrawn all of the capital that he put in, in the first place, and it might not.

Q. Can you tell from this personal account here of Munsuri as to what the items were for, etc., previous to the opening of this book?

A. No, I could not tell. I would have to look at the books before April 30, 1902, to find out how his account stood.

Q. Did it appear in the "Diario" that the book-keeper started to make two separate accounts—one for the capital account, and one for the personal account?

216 A. Yes, it did. I assume that he intended to keep the capital accounts separate, but Munsuri ordered him to put it back into the capital account (Diario, page 108).

Q. Did you see any difference in looking at the accounts of Trueba and Munsuri; did you see any difference in their accounts in regard to their personal expenses, etc., or are they about the same?

A. Each account was an open account, as I stated, and a very

active account. I noted in the account of Trueba they paid his house-rent monthly, newspaper subscriptions, etc., and there were very small charges and credits in the accounts of Munsuri.

Q. As far as these books go, did you see any difference in the accounts of Munsuri and Trueba?

A. No.

REFEREE: Mr. Lyon, do you mean to say that according to the ledger, page 87, the entry beginning July 1, 1902, that practically the only interest Munsuri had in the firm, according to this account, was $174.23?

A. That is the way that it stood at that time. His account had been opened and had had so many charges and credits brought into it that there was a $174.23 credit balance, whereas the capital should have been shown on the debit side of his account.

W. H. HAWKINS, Attorney for Heller & Long: Mr. Lyon, is it possible to say from these books, or could you judge from these books, looking at the accounts of Trueba and Munsuri, whether one was a special and the other a general partner.

A. No, there is nothing to indicate that there was any difference in the interest in the firm except a difference very largely in Munsuri's favor, because he was the larger partner. He had put
217 in more money and seemed to be the larger partner.

Q. Will you tell me how Munsuri's accounts stood in June 1902, at the time the $40,000.00 loan was made?

A. Now, on June 18, 1902, the firm borrowed $40,000.00 and this $40,000.00 stands on the books as a liability of the firm due Munsuri and for which liability they opened a new account. It is evident from looking over the books that they needed the money at that time in their business. Do not misunderstand me; it does not always follow when a firm or business house borrows money that it is insolvent. A good many business houses are constantly turning over money and have to borrow to carry on their business. But it is a fact that on June 18, 1902, they borrowed $40,000.00 from Munsuri and that he, or they, had opened a new account on the books with which he was credited which showed a liability of the firm?

Q. Will you tell me if dividends were declared after that date?

A. Nine days after this $40,000.00 were borrowed, on June 27, 1902, the firm distributed some $25,000.00 in surplus, page 104, "Diario." $3,017.06 was distributed to employees, and $22,856.00 was divided by the two partners: $15,185.90 being credited to the account of Munsuri, and $6,822.66 being credited to the account of Trueba. These two distributions—the first to the employees, and the second to the partners—balanced the account of profit and loss, closing it out.

Q. Will you also tell us, please, if the house at that time, judging from these books, needed this money in their business?

A. It is very evident from these books, it would look at a glance, as if they had taken their dividends out at the wrong time. Nine

days before this they had to borrow $40,000.00, and on the
218 27 of June, 1902, nine days later, they take out of the business by crediting the sums to their accounts $25,000.00, including the $3,000.00 distributed to the employees.

Q. Will you tell us, also, if the accounts of these two partners were overdrawn at that time, at the time of these dividends?

A. You will understand that if the account of Munsuri and the account of Trueba were always a capital account it should always show an offset, a debit balance equal to the amount of the capital they put in at the beginning, but as these accounts were open accounts and as we cannot tell much about them without going back of April 30, 1902, we may say that these dividends that they credited to their accounts would practically have balanced their accounts, so as to indicate that their capital had all been withdrawn.

Q. How did Munsuri's account stand at that time with the firm, just previous to the dividends?

A. Just previous to the dividends there was a debit balance in the account. Not a debit balance as large as the capital he had put in, considerably less.

REFEREE: What was that debit account?

A. I can't tell without going back beyond April 30, 1902, but these dividends declared practically balanced their accounts.

HENRY F. HORD, Attorney for Bankrupt: There is a debit and a credit of $34,850.

A. That is the capital entry.

Q. Please explain why this amount, $34,850.00, on page 104, Day Book, should appear credited on one side of Munsuri's account, page 87, and charged to him on the same date on the other side of his account?

219 A. That $34,858.08 was taken out and credited in this account over here, in the capital account to be opened that day. The same thing was done in the account of Trueba, $4,477.96. It was put back, so that it stood again in their open accounts. It was not allowed to stand in the account of either Munsuri's capital or Trueba's capital. They were both opened and closed on that same day.

Q. Would you say that the house at the time of declaring the dividends was in need of that surplus?

A. I have said that they did need the surplus at that time. It should not have been credited to their personal account.

Q. Did the entry of the payment of the $23,000.00 have the effect of reducing the capital of the firm?

A. It did not have the effect of reducing the capital of the firm, but it would have the effect of taking from the firm some of its assets. It changed the form of liabilities. It reduced it, but not the capital itself.

Q. Will you please, by looking at the books, tell whether Munsuri was indebted to the firm at the time of the payment to him by the firm of the $34,000.00, and how long has his indebtedness continued, about? Was he at that time indebted to the firm?

A. These entries on this page, 410, "Diario," were entries in which Munsuri's account was credited with 25%—I do not remember if exactly 25%—amounts due various creditors. It does not balance those accounts. The effect of these entries was to take from amounts due merchants and business-houses, a portion of the balance due them and credit that balance to Munsuri's account. Those creditors' accounts stand open on these books, and as far as these books are concerned the firm evidently owes them now ¾ of what they had owed at the time just before this entry was made.
220 This entry closed Munsuri's account; Munsuri's account balanced with that entry at that time.

Q. Then, in other words, just previous to that he owed that amount to the firm?

A. Just previous to that on the debit side there should always be an offset equal to the capital. Capital is a liability and should be on the credit side, and assets on the debit side. Munsuri should have had in the firm the amount of money required to offset the capital he put in in the first place. This $34,000.00 closes his account. He assumed those liabilities equal to the amount of $34,973.49. His account, as I say, is an open account, and I should have to analyze it most thoroughly in order to answer that question. I should have to go back of April 30, 1902.

Q. If a third person, not connected with the firm, had bought up on his own hook the credits of the firm, would the payments by him so made be entered up in a new account with him, or be entered up in those same creditors' account.

A. In making an entry of that kind myself I should certainly open an account crediting him with the full value of those accounts as they stood on the books.

Q. In other words, is it right, according to the principles of bookkeeping, if he legitimately made a payment on his own hook, to enter up his payment made in these accounts of the creditors with the firm as though it had been made by the firm?

A. Absolutely, no.

Q. In other words, as shown by the books, the payments were made by the firm?

A. As shown by the books a portion of the balances due these people are credited to him, so that the liabilities of the firm are to him for that portion credited and the accounts are still opened
221 on the books, a large balance, about ¾, being still due the parties in question.

Q. What I want to get at is this: Look at the accounts of these various creditors in this book. Does that payment apparently show that it was made by the firm or by Munsuri as a third party without any connection with the firm?

A. Well, it is apparently made by some one in the firm. It is put in the same account where Munsuri has his capital. It is evidently a transaction that the firm had something to do with.

Mr. HENRY ROBERT WILLIAM KORBER, being duly sworn, is examined by W. H. Hawkins, Attorney for Heller & Long:

Q. What is your full name?
A. Henry Robert William Korber.
Q. You are in business in San Juan, and have been for many years?
A. Yes.
Q. Did you know Succs. Hernaiz?
A. Yes.
Q. Did you know Julian Munsuri?
A. Yes.
Q. Did Julian Munsuri ever come to your banking-house, in your recollection, and buy drafts for the house?
A. I think so.
Q. Can you give any specific dates?
A. No.
Q. Could you if you looked at your books?
A. No.
Q. It would not show on your books?
A. It would not show who got them.
HENRY F. HORD, attorney for bankrupt: Whatever checks Mr. Munsuri bought were bought for the firm, were they not?
222 A. I could not say who bought them, merely that they were bought for the firm.
REFEREE: But are you sure that he bought checks for the firm?
A. Yes, sir.
Q. Did you ever see him in the establishment?
A. Yes, sir, quite often.
Q. Did he have a desk there.
A. As to that I am not sure.
Q. But you have seen him writing at a desk there?
A. Yes, sir, but I am uncertain as to whether he had a regular desk assigned to him or was merely using one of the desks belonging to an employé of the house.

223 JOSE MARIA PEÑA, being first duly sworn, is examined by W. H. Hawkins, Attorney for Heller & Long:

Q. What is your name?
A. Jose Maria Peña.
Q. And your occupation?
A. I have been a merchant, but at present I am engaged in managing real properties.
Q. Have you been in business in San Juan for long?
A. Yes, sir.
REFEREE: How long have you been in business?
A. About 30 years.
W. H. HAWKINS, attorney for Heller & Long: Did you know the firm Succs. de José Hernaiz?
A. I did.
Q. Did you know, and do you still know, Julian Munsuri?

A. Yes, sir.
Q. Have you ever acted as an attorney in fact for him?
A. No, sir.
Q. Have you ever represented him?
A. No.
Q. Have you ever collected rents for him?
A. I have.
Q. By what authority?
A. By authority of Mr. Trueba.
Q. From what properties did you collect rent?
A. Cruz 4 and 17 and San Francisco 32.
Q. How much did those rents amount to per month?
A. $650.00.
Q. That includes the three houses?
A. Yes.
Q. Did you collect rents or administer any rural properties belonging to Julian Munsuri?
A. No.
Q. Do you know of your own knowledge whether he owns any?
224 A. I do not.
Q. Did you remit the $650.00 direct to Mr. Munsuri?
A. I have sometimes remitted directly to him under instructions of his nephew.
Q. By his nephew you mean Trueba?
A. Yes, sir.
Q. Have you the lists, or do you keep the stubs of the books from which you gave receipts for rent?
A. Yes, but I have not got them with me.
Q. Did Julian Munsuri take an active part in the management of the firm of José Hernaiz?
A. I do not remember.
Q. Did you ever see him at No. 4 Cruz Street transacting business on the part of the firm?
A. No, sir, The firm had the regular partner there for that.
Q. Are you related to Mr. Munsuri?
A. I am not.
REFEREE: Are you an intimate friend?
A. Yes.
Q. How long have you known him?
A. Ever since he came here; I do not remember how many years.
Q. Did not Munsuri have a desk at No. 4 Cruz Street?
A. Not that I know of. The only desk that I know to have existed there was the regular desk of Succs. Hernaiz.
Q. How many desks were there there?
A. Only one.
Q. Who used to be frequently at that desk?
A. Trueba, his nephew; and the book-keeper.
Q. Munsuri was never there at all, was he?
A. I have never seen him at the desk. When he went in there he went into the establishment.

225 Q. When commercial representatives of houses in the States came down did you ever see him talking to them there?
A. I do not remember seeing him.
Q. Do you know Eduardo Sainz. Did you ever see Eduardo Sainz in Porto Rico?
A. Yes.
Q. Did you ever see him with Julien Munsuri?
A. Yes, I have seen him on occasions on the streets.
Q. In No. 4 Cruz Street you never saw him?
A. No.
W. H. HAWKINS, attorney for Heller & Long: Did Julian Munsuri ever talk with you in regard to the business of the firm?
A. No.

JOAQUIN MATIENZO, being first duly sworn, was examined by W. H. Hawkins, Attorney for Heller & Long.

Q. What is your occupation?
A. Merchant and farmer.
Q. Have you lived long in Porto Rico?
A. Yes, 28 years.
Q. Did you go to New York in the Fall of 1902?
A. Yes.
Q. How long were you there?
A. I was there on several occasions.
Q. Well, at that time, in 1902, how long did you stay there?
A. Well, I have always remained there for a month or month and a half.
Q. Do you know Julian Munsuri?
A. Yes.
Q. Did he go with you at that time?
A. No.
Q. Did you see him in New York?
A. Yes, one of the times I saw him in New York.
226 Q. Were you with him at all during that time, in his company?
A. I was not with him.
Q. Did you go around with him to the various wholesale houses, or any of them?
A. I do not remember having seen him in any of those houses.
Q. Were you ever with him when he went to see the house of Switzer, Pembroke & Company?
A. I have had business dealings with the house of Switzer, Pembroke & Company, but I do not remember having seen him there on any occasion.
Q. Well, do you remember his ever telling a Mr. Putnam of that firm that he was really a general partner in the firm of Succs. Jose Hernaiz, but allowed himself to be called a special partner here in Porto Rico?

HENRY F. HORD, attorney for bankrupt: I object to that question on the ground of its being irrelevant and immaterial.

REFEREE: I admit the question.

A. I do not know anything about that.

MANUEL ALONSO, being duly sworn, is examined by W. H. Hawkins, Attorney for Heller & Long.

Q. How old are you and how long have you lived in Porto Rico?
A. 32 years old; I have been 18 years in Porto Rico.
Q. Did you ever work for the firm of José Hernaiz?
A. Yes, sir, during six years.
Q. 1896-7?
A. At that time.
Q. How long did you continue with them; up to what date?
A. Up to 1902, when I went to Spain.
Q. Do you know Julian Munsuri?
A. Yes, sir.

227 Q. During that time that you were working in the firm did you ever see Julian Munsuri there in the establishment, No. 4 Cruz Street?

A. Yes, sir, in No. 4 Cruz and in the office or store of Succs. Hernaiz.
Q. He had a desk there, did he not?
A. He did not have any office; he had the desk of the firm.
Q. Well, he used that desk, did he not?
A. Well, perhaps to write private letters to his family.
Q. Did you know Eduardo Sainz?
A. Yes, sir.
Q. Do you remember one time when Eduardo Sainz was present talking with Julian Munsuri about some purchases or some goods that he, Eduardo Sainz, offered to sell?
A. I have known Eduardo Sainz to come to the firm and offer his goods to the general partner of the firm.
Q. Don't you remember one of those occasions in which after talking with Eduardo Sainz Munsuri ordered his partner, Trueba, and you to go and look at the samples of Eduardo Sainz?
A. While I was in the firm he never gave any orders or instructions.
Q. Then, you don't remember any such occasion?
A. No, sir. He did not interfere or have anything to do with the purchases.
Q. With whom do you work now?
A. Succs. Orcasitas & Company.
Q. Is that the same firm who bought the store in which you are working now from Julian Munsuri?
A. Yes, sir.

REFEREE: Do you know Urrejola; did you ever see him
228 burn any books of the store?
A. No, sir.
Q. During the time you have been there?
A. During the time I was in the firm he was not the one who kept the books.

Q. If he had burned any books you would have seen it?
A. Yes, sir.

MANUEL RANERO, being duly sworn, is examined by W. H. Hawkins, Attorney for Heller & Long:

Q. Your occupation and age?
A. I am a business clerk; 31 years old.
Q. Where do you work?
A. Mendizabal & Company.
Q. Did you ever work for Succs. José Hernaiz?
A. No, sir.
Q. Never?
A. No, sir.
Q. Do you know Julian Munsuri?
A. Yes, sir.
Q. Did you ever have occasion to go to the store of Succs. José Hernaiz, No. 4 Cruz Street?
A. I do not remember having been there; I do not think I have ever been there.
Q. Did you ever see Julian Munsuri in the establishment selling goods?
A. I do not remember, because I was a counter-clerk obliged to be on duty all of the time and did not have time to go around.

RAFAEL FERNANDEZ, being first duly sworn, is examined by W. H. Hawkins, Attorney for Heller & Long:

Q. What is your age and occupation?
A. 27 years of age; merchant, clerk in a business house.
229 Q. Where do you work?
A. J. Villamil & Company.
Q. Did you ever work for the firm Succs. José Hernaiz?
A. Yes, sir.
Q. When?
A. Some five years ago.
Q. Were you there in 1901-1902?
A. Yes, sir.
Q. Were you there in 1903?
A. No, sir.
Q. Well, were you there previous to 1901?
REFEREE: When did you enter their employ, and when leave?
A. I do not remember the exact dates.
Q. But the year?
A. I do not remember the year; the account-current should show it.
Q. About how long were you working for them?
A. Some 14-20 months, only.
Q. Did you know Julian Munsuri?
A. Yes, sir.
Q. Did you ever see him at his desk or at the desk there in the establishment of José Hernaiz?

A. I have seen him several times in the Almacen, in the establishment.

Q. Did you ever see him selling goods or transacting business?

A. No, sir.

Q. You never at any time saw him transact any business for the firm?

A. No, sir, none at all.

Mr. WENCESLAO BOSCH, being first duly sworn, is examined by W. H. Hawkins, Attorney for Heller & Long:

Q. Will you please state your age, name and occupation?

A. Wenceslao Bosch; attorney; age 48 years.

Q. How long have you been in Porto Rico?

230 A. 19 years.

Q. During all of that time have you known Julian Munsuri?

A. Yes, sir. I am very well acquainted with him.

Q. And the firm Succs. José Hernaiz?

A. Also.

Q. Well, have you acted for Julian Munsuri as his attorney?

A. Well, I have been his attorney at law in connection with the real property of Mr. Munsuri in San Juan.

Q. As far as those properties are concerned only?

A. Yes, sir.

Q. And have you ever acted as the attorney-at-law for the firm Succs. José Hernaiz?

A. Yes, sir.

Q. Have you ever acted as attorney-at-law for Julian Munsuri?

A. Also.

Q. Have you ever acted as the attorney in fact for the firm Succs. José Hernaiz?

A. I have also.

Q. And did you at one time act as the liquidator of the firm of José Hernaiz?

A. I have.

Q. Were you the lawyer for the firm of Succs. José Hernaiz at the time they went into suspension of payments?

A. Yes, sir. I did present them in suspension of payments.

Q. Are you thoroughly familiar with the signature of Julian Munsuri, José Urrejola, and the firm of Succs. José Hernaiz?

A. Yes, I am pretty familiar with them. But I do not guarantee you any signature which might have a resemblance to them.

231 Q. Will you please tell what these papers offered are, and if you recognize any of the signatures?

A. Yes, sir; these papers represent propositions made to the creditors of Succs. Jose; Hernaiz when they presented themselves in suspension of payments. And the signatures, in my judgment, are José Hernaiz, p. p. José Urrejola is the signature in my judgment of José Urrejola. That one which says "Ant. Zomosa" is the signature of Mr. Zomosa, who was one of the receivers appointed in con-

nection with the suspension of payments. The one which says "S. Melon" I consider to be the signature of Mr. Secundino Melon, who was another one of the receivers appointed. And the signature reading "J. M. Peña" is the signature of José María Peña, also receiver in the same matter. I think them all correct; the only difference I observe is that in the case of one or two of them the initials only are given in one place and the full name in another.

Q. At the time you presented the firm of José Hernaiz in suspension of payment did you file with the papers in the District Court of San Juan an inventory of their property?

A. I did.

Q. Do you remember, more or less, what their assets and liabilities were, in round numbers?

A. It is five years since then and my memory fails to carry that far back.

Q. If you were shown an inventory, would you remember?

A. That I could not tell; if I only had the manuscript copy made by myself I could say whether it was correct, but I could not say from the typewritten copy handed me.

Q. Well, do you not remember that the assets of the firm of José Hernaiz were stated in the inventory to be about $117,000.00?

A. I do not recollect it, but it may be that the assets may
232 have amounted in numbers—in other words, the firm of José Hernaiz knew that it was owing money, but inasmuch as the assets for the most part consisted of real property and of accounts of doubtful collection I cannot state positively if the assets equalled the liabilities, and for that reason it was necessary to present the firm in suspension of payment.

Q. Well, do you remember in that suspension of payment proceedings if all of the property of the firm of Succs. José Hernaiz was included?

A. Yes, sir.

Q. Were these three houses belonging to Munsuri included in that inventory?

A. No, for the reason that they were not the property of Succs. José Hernaiz.

Q. Well, was not that inventory filed in the District Court used as a means of settlement with the various creditors, showing that the firm could not pay more than 25% of its claims?

A. That inventory was made because the law says that when a firm presents itself in suspension of payment an inventory should be made of the assets and liabilities of that firm; a report or statement showing the reasons alleged by the firm for taking such action: and the propositions which the firm made to its creditors to the end that none of them should suffer any damage.

Q. Well, were not the creditors informed of this inventory so as to induce them to accept 25% of their claims?

A. The inventory was introduced, and I myself, in compliance with the terms of the law, have mailed, registered the notices to the creditors asking them to be present on the day appointed by the

District Court for the examination of all the inventories and propositions made by the firm with the view that they may accept
233 or reject them.

Q. When Munsuri bought up the claims of the various creditors, did you act for him?

A. That is a professional secret that I cannot disclose.

Q. Well, cannot you say whether you acted or not—I don't ask you what you did—I ask you if you acted for him or not?

A. Yes, I did participate, or have participation.

Q. Well, in these negotiations did you use a copy or speak of the inventory filed in the District Court in order to induce the creditors to accept 25% of their credits?

HENRY F. HORD, Attorney for Bankrupt: I object to that question.

REFEREE: Objection upheld.

W. H. HAWKINS, Attorney for Heller & Long: Notes exception. Does the Referee refuse to allow him to speak at all?

REFEREE: No.

W. H. HAWKINS, Attorney for Heller & Long: Well, I will withdraw the question.

Q. Did you represent Munsuri in buying the claim of the Spanish Bank?

A. What credit do you refer to?

Q. Credit of $5,147.00.

A. I do not remember if I acted for him in that matter.

Q. Do you remember ever having written a letter to Grimmell, Willis and Company, New York, offering on the part of Mr. Munsuri to buy their credit, their claim?

A. I cannot recollect. If you show me the letter and I see my signature attached I will recognize it.

Q. When you took receipts for these various credits, did they run in the name of Munsuri or the firm of Succs. José Hernaiz?

HENRY F. HORD, Attorney for Bankrupt: I object to that question.

REFEREE: Objection sustained.

234 Q. Do you remember what amount was paid Switzer, Pembroke & Company for their account?

HENRY F. HORD, Attorney for Bankrupt: I object to that question.

REFEREE: Objection overruled.

A. I do not know.

Q. Do you know whether those claims were bought by Munsuri at varying rates; some of them 25%, some 50%?

A. I think he did, but I cannot say for sure.

Q. Could you remember which ones received 50%?

A. I do not think I will make a positive statement as to that; I might be mistaken if I did.

Q. Do you remember a Mr. Walsch coming down here, representing Switzer, Pembroke & Company?

A. I do not remember who that man is; I may have known him.

Q. Do you remember of any representative of Switzer, Pembroke & Company coming down here to take up the matter of Succs. José Hernaiz with you?

A. I remember that a representative came; not of a single house, but of a number of houses, which I do not remember, but not to deal with me.

Q. Can you say whether Munsuri was acting for the firm when he bought up these credits, or did he do it on his own responsibility?

A. I do not know, but I do not think that he did so on account of the firm, inasmuch as I always knew him as a special partner of the firm.

Q. Was Munsuri here at the time of the suspension of payment; did he take any part in it?

A. I think the suspension of payment was in 1903.

Q. Well, did Munsuri take any part in it?

A. None at all. Trueba was the one who took part.

Q. Do you know whether Munsuri made any representations as to the assets of the firm of José Hernaiz?

235 A. No, sir, the firm of José Hernaiz intended to present itself in suspension of payment in the year 1902, in the month of June. Mr. Munsuri at that time, one evening came to my house to consult me with regard to the fact that Mr. Trueba had said to him that the firm was in bad condition and he came to me for advice as to whether or not I thought it convenient for him to make a sacrifice with a view of rescuing the firm. Mr. Munsuri said to me that he was willing to do anything to save the firm, and for that purpose he said to me that he had no objection to encumbering his own property to the end of preventing the house from becoming bankrupt. Then I offered to speak to Mr. Arnold, asking for a certain amount with a mortgage on the properties of Mr. Munsuri. And as Mr. Munsuri had said to me that Mr. Trueba had said to him that the amount needed by the firm was $40,000.00, I proposed to the American Colonial Bank that they make that loan with the guarantee of those houses. The American Colonial Bank accepted the offer and when the loan was effected the major part of it was used up in drafts to pay the creditors of José Hernaiz.

Q. Would that show on the books?

A. June 17, 1902, there appears in the books that $37,500 was received and payment of over $30,000.00 made; $2,850.00 remained on deposit because Mr. Munsuri was the owner of an undivided interest in one of the houses.

Q. Is that interest $2,850.00?

A. I do not know; I know that that amount was held up and that it was paid when the power from Mrs. Munsuri came from Spain. I believe the payment was made in October of that year.

Q. When the mortgage in favor of the Colonial Bank was made the deed of recognition was also executed?

236 A. From Succs. José Hernaiz in favor of Julian Munsuri. because I said to Mr. Trueba that was a sacred debt and that inasmuch as Mr. Munsuri was not making anything on the transaction, but on the other hand was affecting his own property, he ought to have some credit against the firm. So much so that the same interest that Munsuri paid to the Colonial Bank was the interest that Succs. José Hernaiz paid to Munsuri; therefore he was not gaining anything on that transaction.

Q. Now, Mr. Bosch, who employed you to represent Succs. José Hernaiz in the suspension of payment?

A. Trueba, the active partner.

Q. Did you not recently pay taxes on a good many rustic properties belonging to the firm?

A. Yes, sir.

Q. Where did you get the money?

A. I have money in my possession belonging to Succs. José Hernaiz, which is at the disposition of the trustee appointed, because as the liquidator of Succs. José Hernaiz I have been making collection of all that was owing to the firm, and also paying what they owed.

Q. Well, what have you on hand now, more or less?

A. I cannot say exactly, but I think it amounts to about $500.00 or $600.00.

Q. Why does that not appear in the schedules of the bankrupt?

A. There appears a certain amount, but after that I collected other amounts. Does not that list show some cash?

HAWKINS: The schedules show $24.00 cash on hand.

Q. Then have you been collecting accounts since this petition was filed?

A. Yes, sir.

Q. By what authority?

A. Being liquidator, I asked Mr. Hord and he said there
237 was no objection as there was no trustee.

Q. And how much money did you pay out for taxes?

A. Well, I have been asked to pay over $500.00, but I wrote a letter to the Treasurer opposing the payment of such taxes as in my judgment should not be paid. I think I paid the Collector at Utuado over $40.00 and he only sent me a receipt for $23.00 or $24.00, stating that the balance he holds at my disposition. I have made those payments believing that I was protecting the interests of José Hernaiz.

Q. Did you tell the Referee, or the representative of the creditors that you were paying those amounts for taxes?

A. No, sir.

Q. Nor to the representative of Heller & Long?

A. No. I thought that inasmuch as no trustee had been appointed, so that I could turn over the affairs, that I could make those payments to prevent the "fincas" being put up for sale. I did not know that I was under any obligation to make report to the Referee

Q. How much was it that you paid to the Treasurer?

A. I paid nothing to the Treasurer; to the Collector of taxes at

Utuado I made payments. I went to the Treasury Department to make payment, but was told that the receipts were in the hands of the Collector at Utuado and that I ought to remit by postal money order to Utuado.

Q. Are all of the country properties owned by the firm included in this list?

A. What list is that; the list presented in Bankruptcy?

Q. Yes.

A. Yes.

Q. Are they put in at the value appraised by the Treasurer?

A. I think the value appearing in the inventory of the houses is the one given there in the petition or schedules.

Q. Are you sure that the list of properties—for instance—
238 one in Rio Abajo; Salto Arriba; Guayama; Tetuan; Salto Abajo; appear also in this list?

A. I do not know what appears in that list, because you must bear in mind that after that list was made Mr. Landron bought at auction some properties in the name of Eduardo Maurer. I do not know if any of those "fincas" have been put up at auction.

Q. I am asking you if all of the rustic properties that appear on the lists of the Treasury Department appear also in these schedules?

A. In the receipts of the Treasury Department there appears some properties that I never knew existed before.

Q. Then some of them are not on these schedules?

A. Yes, that is the reason why I made claim against payment of taxes on those properties—because they did not belong to Succs. José Hernaiz—at least, that I did not recognize them as properties of that firm, and also because they claim that taxes are due for the year 1901, whereas I have receipts for taxes paid for 1904, and that is the reason that I opposed that payment.

REFEREE: Did you pay any taxes on property which was afterwards turned over to Maurer?

A. No, although Mr. Landron wants me to pay them up to the time the transfer was made to him.

Q. Did you pay between $600.00 and $700.00 for taxes recently to the Treasury Department?

A. I have not. They asked me to pay that, but I wrote opposing it and giving the reasons why I refused to make such payment.

Q. Have you any tax-receipts in your possession?

A. Yes, sir.

239 Q. Will you kindly turn them over to the Court?

A. Yes, sir.

Referee orders Mr. Bosch to deliver all tax-receipts to the Court.

W. H. HAWKINS, Attorney for Heller & Long: What caused you to put Succs. José Hernaiz in bankruptcy this last time?

A. One of the reasons was because I thought one of the creditors wanted to obtain the preference over the others, and that is why I thought by presenting them as such they would all collect equally.

Q. Did you go and talk to Mr. Hord here to represent the bankrupt?

A. Of course, I represent the bankrupt.
Q. Then you took the case to Mr. Hord?
A. Yes, sir.

HENRY F. HORD, Attorney for Bankrupt: Page 11 of the Ledger, Account of Capital Stock, under date of February 15, 1903, there is a balance shown to the credit side of $37,473.87.

Page 294 of the Journal, that amount is carried forward in the balance-sheet of the firm entered under date of February 15, 1903.

Would further like it to appear that on Page 87 of the Ledger there is an entry on the credit-side of Julian Munsuri, personal account, $34,858.08 for account of Capital Stock, which is offset by an entry on the debit-side for exactly the same amount, which explains the entry made on page 108 of the Journal.

Page 94 of the Ledger. In the account of José Trueba there is an entry on the debit-side of $4,477.96 on account of Capital Stock, which is offset by an entry on the credit-side for the same amount, and that these two amounts, namely: $34,858.08 and $4,477.96, show that under the date of the same, namely, June 27, the exact balance of the amount of Capital Stock on hand on that date, as shown by the account on page 11 of the Ledger. Showing conclusively that no part of the Capital Stock was credited to the individual accounts of the two partners.

Meeting adjourned until 10 o'clock in the morning of May 14, 1907.

ANDRÉS B. CROSAS, *Referee.*

240 In the District Court of the United States for Porto Rico.

Voluntary Bankruptcy. No. 22.

In the Matter of SUCS. DE JOSÉ HERNAIZ, in Liquidation, Bankrupts.

I, John L. Gay, Clerk of the District Court of the United States for Porto Rico, do hereby certify the foregoing pages numbered from "1" to "82" inclusive, and from "113" to "239" inclusive, to be a true and correct copy of the record and proceedings in the above-entitled cause as the same remains of record and on file in the office of the clerk of said court, as called for by the præcipe for transcript filed by counsel for the appellant; and I also certify that pages numbered "82" to "112" inclusive, are copies of record and proceedings in case No. 11, Bankruptcy, entitled Sweetser, Pembroke & Co. et al. vs. Hernaiz & Company, (Involuntary Bankruptcy), which record and proceedings are called for by the præcipe filed by counsel for appellant, copy of which præcipe is attached hereto.

In testimony whereof, I have hereunto set my hand and affixed the seal of said District Court, this tenth day of March, A. D. 1909.

[Seal United States District Court for the District of Porto Rico.]

JOHN L. GAY,
Clerk District Court of the U. S. for Porto Rico.

241 *Præcipe of Transcript of Record on Appeal.*

(Filed March 1st, 1909.)

In re Sucs. of José Hernaiz. In Bankruptcy.

Præcipe for Record on Petition for Review.

To the Clerk of the above-entitled Court:

Please certify the following record to be used in the Supreme Court of the United States on petition for Review by Julian Munsuri on the question of Jurisdiction as well as the relation of said Munsuri to the firm of Sucrs. de José Hernaiz:

1. Motion before the Referee, May 25, 1907, to vacate certain orders affecting the private property of Julian Munsuri.
2. Affidavit of José Trueba in support thereof.
3. Opinion of the Court in Belen Ortiz, et al. vs. Evaristo Alcalá del Olmo, et al.
4. Voluntary petition in Bankruptcy of Sucrs. de José Hernaiz & Co.
5. Order of Reference.
6. List of Debts proved.
7. Munsuri's Power of Attorney to Bosch.
8. Petition of Creditors for Restraining Order.
9. Restraining Order.
10. Petition and Order to file Schedules.
11. Order to the Marshal to collect rents.
12. Order of the Referee vacating previous orders.
13. Petition to review Order.
14. Certificate of Referee to the Court.
15. Motion to declare Munsuri a general partner.
16. Order declaring Munsuri a general partner.
17. Opinion of Court reversing Referee.
18. Notice and Motion by Munsuri to vacate previous orders because of lack of jurisdiction.
19. Supplemental Motion to vacate—with exhibit of creditors filed Dec. 7, 1903.
20. Opinion of the Court reaffirming former decision, but reserving question of settlement.

242 21. Petition of Munsuri to Referee to reconsider and disallow certain claims.

22. Petition of Sweetzer, Pembroke & Co. in involuntary Bankruptcy with Amended affidavit.
23. Affidavits of José Trueba and Julian Munsuri denying Bankruptcy.
24. Motion of Bernheimer and Walter, Garner & Co., Heller & Long to be admitted as creditors.
25. Motion of Tefft, Miller & Co. to be substituted as petitioning creditors.
26. Motion to dismiss.

27. Order of Court requiring defendants to file schedule and to give notice of Motion to dismiss.
28. Order of Court requiring that Notice be given Creditors.
29. Notice to creditors.
30. Protest of Ed. Maurer and Heller and Long against dismissal.
31. Opinion of Court overruling Motion to dismiss.
32. Consent to dismissal.
33. Order of Court to dismiss.
34. Receipts of Creditors (13 pages).
35. Order of Referee denying motion.
36. Petition for Review.
37. Report of Referee with findings of fact and conclusions of law.
38. Memorandum of the Court.
39. Petition for Writ of Review to Sup. Court.
40. Assignment of Errors.
41. Citation.
42. Bond on Appeal.
43. Testimony taken in various proceedings before Referee.

——— ———,
Attorney for Julian Munsuri.

Service of the foregoing præcipe accepted by copy this first day of March, 1909.

WM. H. HAWKINS,
Attorney for Creditors.

243 *Petition for a Writ of Review to the United States Court of District of Porto Rico.*

In the Supreme Court of the United States.

In re Sucs. of José Hernaiz. In Bankruptcy.

Citation.

United States of America,
District of Porto Rico, ss:

To J. H. Fricker, Trustee, and William H. Hawkins, Attorney:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States, to be holden at Washington, within thirty days from the date hereof, pursuant to a petition for a Writ of Review filed in the Clerk's Office of the District Court of the United States for Porto Rico, wherein Julian Munsuri is the petitioner, and the Trustee, for certain creditors is respondent, to show cause, if any there be, why the judgment or order in the said petition mentioned should not be corrected, and speedy justice not to be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief-Justice of the United States, this 19th day of Feb'y, 1909.

B. S. RODEY,
Judge of the U. S. Dist. Court for Porto Rico.

I hereby acknowledge service of a copy of above citation on me personally this 19th day of Feb'y, 1909.

WM. H. HAWKINS,
Attorney for Trustee.

[Endorsed:] #22 Bank. In the District Court of the United States for P. R. In the Matter of Sucesores de José Hernaiz in Liquidation. 2/19. Citation. Filed clerk's office, United States District Court, Feb'y 19, 1909. John L. Gay, Clerk of the Court.

244 In the District Court of the United States *of* Porto Rico.

In the Matter of SUCESORES DE JOSE HERNAIZ, in Liquidation, Bankrupt.

In Bankruptcy.

I, Bernard S. Rodey, Judge of the United States District Court for Porto Rico, hereby certify that the foregoing Transcript contains all of the Record, inclusive of testimony and exhibits, presented to me for the consideration of the question of the relation of Julian Munsuri to the firm of Sucesores de José Hernaiz; and I further certify that the said Transcript is a complete record of all the pleadings, papers, and documents of whatsoever character presented to me for consideration of and decision upon the question of the jurisdiction of this Court to subject the private property of Julian Munsuri to the payment of the debts of the bankrupt firm of Sucesores de José Hernaiz.

B. S. RODEY,
Judge of the United States District Court for Porto Rico.

Endorsed on cover: File No. 21,561. Porto Rico D. C. U. S. Term No. 177. Julian Munsuri, plaintiff in error, vs. J. H. Fricker, trustee. Filed March 22d, 1909. File No. 21,561.

BEFORE THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 21.

JULIAN MUNSURI

vs.

J. H. FRICKER, TRUSTEE.

BRIEF FOR JULIAN MUNSURI.

Statement.

This case presents, by certification of the United States Court for the District of Porto Rico, questions of jurisdiction of that court to proceed, by summary proceedings, to declare Julian Munsuri a general partner of the firm of succesores of Jose Hernaiz(alone adjudged a bankrupt on proceedings begun September 26, 1906 (R., 11, 18), and to sequestrate his individual property on the island of Porto Rico.

Julian Munsuri is a subject of the King of Spain and was and had been for some years prior to the institution of these bankruptcy proceedings in the court below a resident of

Bilbao, Spain (R., 24, 98), with no place of business in Porto Rico.

Said copartnership was formed in May, 1895, by notarial articles of copartnership, duly recorded, with Julian Munsuri as a *special partner* and Jose Trueba and Isadore Llona as general and managing partners. By proper notarial instrument Llona withdrew August 10, 1897, receiving all of his capital, and the firm continued with Julian Munsuri as special partner and Jose Trueba as general and managing partner. Prior to March 30, 1901, the date limiting the copartnership, to wit, on February 16, 1901, the same, by proper notarial instrument duly recorded, was extended from March 30 to December 31, 1901. On October 17th, 1901, Julian Munsuri gave Jose Trueba a power of attorney authorizing him to execute a renewal of the contract from the time of the expiration, "for one or two years more." Acting under this authority and in his own behalf, Jose Trueba, on December 30, 1901, executed, and there was duly recorded, an extension of the limited copartnership agreement for a period of two years, specifying that the copartnership should terminate on December 31, 1903 (R., 13-15, 23-24, 71). Previous to this time, however, to wit, on April 1, 1903, said firm filed a petition in suspension of payments in the San Juan District Court, to which was attached, as required by law, an inventory of its assets and liabilities. Notices of this proceeding were sent to all the creditors (R., 24, 73), from which time until the institution of these bankruptcy proceedings, September 26, 1906, the firm remained in liquidation (R., 24); except that on June 8, 1903, Sweetzer, Pembroke & Co., Sherman, Reid & Co., and the American Trading Company, as creditors, by involuntary proceedings in bankruptcy, filed their petition (R., 46) in the United States Court for the District of Porto Rico against said firm, and both of the members thereof, charging insolvency against said firm and each of the members thereof and charging, as an act of bankruptcy, the execution of a deed by said firm in favor of said Julian Munsuri, under date

of March 7, 1903, conveying three certain stores in San Juan. To this petition each of the members of the firm promptly appeared and answered (R., 50, 51), denying insolvency, the commission of the act of bankruptcy averred, or that Julian Munsuri was a general partner, responsible for the debts of the firm, and averring that he was, *"only a comanditario or special partner according to the laws of Porto Rico* and that said Jose Trueba y Munsuri *is the sole general partner* doing business under said firm name."

Thereafter Bernheimer & Walter, Garner and Company, and Heller & Long, as creditors, filed their petition (R., 52-53), alleging settlements with original petitioners, adopting the averments of their petition and asking that they may be permitted to carry on the proceedings as if original petitioners. Thereafter a like petition was filed by Teft, Weller & Co., which was followed, on December 2, 1903, by a motion of *all of these creditors* to dismiss the proceedings (R., 61). The next day the court passed an order (R., 56) requiring twenty days' notice to be given to all of the creditors. A schedule was filed (R., 36) showing ownership by Julian Munsuri, special partner, of most of the claims against the firm; and, thereafter, as an individual creditor of the firm and owner of said claims, he filed formal consent for dismissal of the proceedings (R., 59-60), filing also in court the original evidence of assignments to him (R., 62-71). This action was opposed by two creditors, Edward Maurer (R., 57), and Heller and Long (R., 58). On February 20, 1904 (R., 58-59), the court rendered an opinion in which it was found that Julian Munsuri was, (1) *"a special partner of the defendant firm"* and (2) that he had purchased most of the claims against the firm *"and is now the owner thereof"*; but the court sustained "the grounds of opposition to dismiss this proceeding," as made by Maurer and Heller and Long and overruled the motion to dismiss. All of the creditors acquiesced in this decision of the court; and, the assets of the firm probably being amply sufficient to pay the claims of Maurer and Heller and Long, they both promptly "with-

drew their opposition to the dismissal of said involuntary petition" (R., 60); and the court dismissed these original bankruptcy proceedings, brought in 1903, after notice to all creditors, on March 28, 1904 (R., 61-62). And settlement with all creditors, except Maurer and Heller and Long, who consented to the dismissal, was thus effected in 1904, all acquiescing in the decision of the court that Julian Munsuri was a special partner and the owner of the balance of the claims against the firm.

About this time, in 1904, Julian Munsuri left Porto Rico for Spain and the said Jose Truegas continued the liquidating of the business of said firm as general partner thereof, Julian Munsuri not having ever thereafter returned to Porto Rico. Wencesloa Bosh, a Spanish lawyer of San Juan, was appointed liquidator (R., 24), as having previously been employed by Trueba, as active partner, to represent the firm in the suspension of payment preceding in the local court of Porto Rico (R., 14).

Litigation ensued with Maurer, and, to prevent Maurer from getting what was deemed by Bosch an undue preference over the balance of the creditors and while Bosch was also attorney for the partnership, he decided to have the limited copartnership wound up by bankruptcy proceedings through the Federal court (R., 142-143). He took the matter to Mr. Hoard, an American attorney practicing in the Federal court (R., 142-143); and Mr. Hoard, on September 26, 1906, filed a voluntary petition in bankruptcy (R., 17), the beginning of the proceedings sought to be reviewed by this court.

The voluntary petition, verified by the managing partner, sought to have the limited copartnership alone adjudged a bankrupt. It was entitled:

> "Sucesores De Jose Hernaiz, in Liquidation, Bankrupts.
>
> * * * * * * *
>
> "The petition of sucesores de Jose Hernaiz, merchants, in *liquidation*, composed of Jose Truebas Mun-

suri, general partner, and Julian Munsuri y Hernaiz, *limited partner,* of the city of San Juan in the Island of Porto Rico."

The petition avers that the firm owes debts it is unable to pay in full and that it is willing to surrender all of its property for the benefit of its creditors (R., 17). "The schedule as filed set forth that there were but three creditors: Messrs. Heller and Long, Julian Munsuri, and Ed Maurer" (R., 24).

This petition *did not aver the insolvency of either of the members of the firm;* and there is nothing in the record to show insolvency of Julian Munsuri. Quite to the contrary, as it affirmatively appears that he is a man of large means and had been for many years a retired merchant living on his income (R., 96). Julian Munsuri had no knowledge of the filing of the petition September 26, 1906, until some time after the adjudication on the same day. On January 2, 1907, Truebas, the managing partner, testified (R., 98) that he wrote him at Bilbao, Spain, "at the time he went to present it," the petition in bankruptcy.

In harmony with the theory of the case, *In re* Bartenshaw, 157 Fed., 363, that a copartnership is a separate legal entity and can be declared a bankrupt without there being insolvency of any of the members of the firm, and without any consent being obtained from said Julian Munsuri, a solvent though limited partner, and without process of any kind issuing, the court below adjudged the firm a bankrupt on the same day the petition was filed, and the case was referred to the referee with the usual directions. Notice to creditors was apparently given; and, on April 8, 1907, Mr. Bosch, the Spanish attorney, filed a claim on behalf of Julian Munsuri against the bankrupt firm, exhibiting as his authority from Julian Munsuri a power of attorney, executed in Spain under date of April 19, 1906, *more than five months before the proceedings were begun in the Federal court and during the pendency of the insolvency proceedings before the*

insular court. This power of attorney (R., 37-38) grants said Bosch *"special power* to represent him and intervene in the *action started* in the *courts and tribunals of San Juan, Porto Rico,* against the grantor (Munsuri) by Mr. Meawet * * * and in the proceedings that *may be brought about as a result of making effective of a document or writing that the grantor* (Munsuri) of this power *holds as against the partnership in liquidation* entitled 'Sucesores de Jose Hernaiz' * * * *offering proofs in evidence* * * * *desisting or abandoning those which may have been utilized* * * * *to the better defense* of the grantor's rights"; authorizing him as well to the end that should he be *adjudicated any property in payment of his claim against the partnership in liquidation* entitled "sucesores of Hernaiz" he may accept them and have the same registered in his name in the Register of Property, giving therefor the necessary public or private documents, and doing all the other acts that to that end may be necessary and advisable."

Jose Trueba responded for the firm before the referee in the ordinary examination of bankrupt and Mr. W. H. Hawkins, appearing as counsel for Heller and Long, interrogated him and other witnesses, the testimony taken appearing (R., 89-143), and concluding with the reference of May 13, 1907 (R., 113-143), which adjourned for further reference the next day (R., 143).

Instead of continuing the proceedings before the referee and without any pleadings being filed or notice being given that an effort would be made to controvert the position taken by the court in its opinion in the former proceedings of 1903 to the effect that Julian Munsuri was a special partner and the owner of the claims against the partnership other than those of Heller and Long and Maurer and on which theory those proceedings were dismissed and without apparently taking any steps to review those former proceedings to which Julian Munsuri and all of the creditors were parties, counsel who up to that time had appeared on behalf of Heller and Long, suddenly presented before the referee,

on May 13, 1907, the claims of certain creditors, who had assigned their claims to Munsuri and were parties to the records and proceedings before the bankruptcy court in 1904, when those proceedings were dismissed after settlements were affected and placed of record in the bankruptcy proceedings as above stated.

The next day, May 14, 1907, without any proceeding being had to obtain personal jurisdiction over Julian Munsuri, Mr. Hawkins as "attorney for various creditors herein" in a four-line *unverified* paper, "petitions the referee to order Julian Munsuri, who claims to be a special partner in the above-entitled firm, or his agent, to file schedules of property of said Julian Munsuri." Thereupon and without a notice of hearing the referee, on the same date, "ordered that Julian Munsuri or his agent file schedules of property in due form as required by law *of all of the individual property* owned by said Julian Munsuri, and that said "Munsuri or his agent be notified of this order." On the same day the referee, upon an unverified petition submitted by Mr. Hawkins, passed an order against Julian Munsuri, his agent or agents, restraining any sale or encumbrance of any properties owned by him in Porto Rico, and requiring his agent to deposit with the referee all monies received from said individual properties as rents and profits; the referee also signed an order addressed to the marshal, directing him to collect all rents from three houses therein mentioned and to notify the tenants thereafter to pay over the rents to the marshal, and authorizing him to pay the interest on the mortgage indebtedness and other necessary expenses (R., 20-21).

Thereafter, on June 15, 1907, Messrs. Sweet, Rossey and Campillo, appearing specially, "for the purposes in this motion set forth and for no other purpose," presented a motion on behalf of Mr. Julian Munsuri before the referee to dissolve the writ of attachment and injunction aforesaid and exhibiting the affidavit of Jose Trueba, managing partner, setting forth a history of the business and of the

relation of Julian Munsuri thereto and exhibiting a notarial instrument constituting the limited copartnership, and stating that upon its formation by the reorganization of the pre-existing firm, notice of the same was sent to all persons or firms having business relations with the firm of affiant, and that each of the creditors now complaining of said firm received said notice, and that said notice fully set forth the fact that said Munsuri was a silent partner in said firm," in evidence of which a copy of the notice was thereto appended. There was also attached to the motion a copy of the opinion of the United States Court for the District of Porto Rico in the case of Otiz *et al.* against Olmo *et al.*, on the subject of the jurisdiction of that court over persons living outside of the jurisdiction of that court (R., 1-17, inclusive).

Thereupon, under date of June 27, 1907, the referee sustained the plea to jurisdiction, and passed an order rescinding both of his said orders of May 14, 1907, vacated and set aside the same as prayed, for the reason that said referee was without jurisdiction of the premises (case No. 21, record, 22); and *the purpose for which the special appearance was entered by Messrs. Sweet, Rossey, and Campillo was ended and their limited authority in the premises had become completely exercised.*

Thereafter a petition was filed by Mr. Hawkins, as counsel for the creditors, for review of the action of the referee in setting aside his previous orders of May 14, 1907, resulting in a certification of the matter by the referee to the court under date of October 22, 1907, which certificate reads in part as follows (R., 23-26).

> "It appears that said firm was a limited partnership (Sociedad en Comandita) formed under the laws of Porto Rico, consisting of Julian Munsuri special partner and Jose Truebas general. It further appears that said firm was entitled by articles of partnership executed on that date before the Notary Juan Guzman Benitez. Subsequently the

firm became embarrassed, for we find on June 17, 1902, a deed executed before the Notary Juan Juzman Benitez by the said firm of Sucs. de Jose Hernaiz, recognizing as due and owing Julian Munsuri the sum of $40,000.00. Which it is alleged was obtained by the said Julian Munsuri for the benefit of said firm by mortgaging certain properties owned by him personally in San Juan to the American Colonial Bank, said money, it is alleged, being used to make a settlement with various creditors of the firm whereby the said Munsuri acquired the rights to the said claims.

"It is alleged that said sum was advanced by Julian Munsuri over and above the interest he had therein as special partner, which it is alleged was already exhausted before this transaction."

In stating his reasons for sustaining the plea to the jurisdiction, the referee says:

"* * * *There is nothing on record to prove that prior to the adjudication the essential consent of Julian Munsuri to this bankruptcy proceeding was obtained.* But aside from this question, the referee is of the opinion that this being in the nature of an involuntary proceeding against a *person wholly without the jurisdiction of the court, who is neither domiciled nor has his principal place of business within this district as required by section 2 of the bankruptcy act, and consequently he has no jurisdiction over the subject matter without due notice to the said Munsuri as is required under the circumstances.* For the said Munsuri apparently has been a special partner in a firm which *has ceased business operations some four or five years ago,* and in which he was solely responsible for such amounts or property as was originally invested by him, and after being exhausted he apparently aided the firm by loaning it money, and subsequently retired completely not only from the business but also from the jurisdiction of this court.

"The referee cannot insist too strongly upon the fact that despite an apparent appearance in this pro-

ceeding of Julian Munsuri by filing his claim that *this does not make him a party to the proceeding for any other but this purpose,* until personal service or even substituted service is had and obtained on the said Munsuri to make him amenable to the jurisdiction of this court. For in the opinion of the referee upon the authorities cited it would be an abuse of equity to attempt to obtain jurisdiction of the person and property of any one outside the jurisdiction of this court without voluntary consent or due process which the referee believes has not been accomplished here, and cannot find any case on all fours with that in bar warranting such action.

"Were this a voluntary proceeding, this question would be eliminated, but here it has been attempted to proceed involuntarily against one who had not proper notice."

On the same day this report of referee was filed Mr. Hawkins, "as attorney for various creditors herein," filed an unverified petition or motion before the court, reciting that Julian Munsuri "claims to be a special partner * * * having only a limited liability," and moving the court that he "be declared a full or general partner in said firm, and generally liable to the full extent of his property for the payment of the just debts of said firm and * * * be ordered to deliver over to the duly appointed trustee herein, all his property not exempt by law to be administered by this bankruptcy court for the purpose of paying the debts of said firm."

Without any service of this motion on Julian Munsuri personally, or without any record evidence of any notice whatsoever being given, either to counsel filing the claim or Munsuri, before the referee or those appearing specially before the referee for the purpose of objecting to the jurisdiction of the court in the premises, the court heard the matter, *in the absence of any representative of Julian Munsuri* or the firm, on October 25, 1907, and made an *ex parte* consideration of the case, allowed his mind to be influenced

not alone by the testimony adduced before the referee in the examination of the bankrupt, all of which, according to the certificate of the court (R., 146), appears in the record (pages 89 to 145, both inclusive), but also by *certain alleged correspondence, letter press books, etc.,* referred to in his opinion (R., 28), *which have never formed any part of the record in this case,* as evidenced by the certificate of the court aforesaid (R., 146), and from this *ex parte* hearing the court reached the conclusion that the conduct of Julian Munsuri in the management of the firm's affairs was such as to constitute him a general partner of the firm. Upon this hypothesis, formed at the *ex parte* hearing aforesaid, partially at least, and alleged documentary evidence never introduced in evidence, the court reached the conclusion that it had personal jurisdiction over Julian Munsuri as well as jurisdiction over his individual property under a theory of law stated by the court in his opinion (R., 29) as follows:

> "We are of opinion that the court has full and complete jurisdiction of the said Julian Munsuri under the bankruptcy act, because the general partner filed the petition as and of the 'Sucesores de Jose Hernaiz,' merchants, in liquidation, composed of Jose Trueba Munsuri, general partner, and Julian Munsuri y Hernaiz, limited partner, and because the said Julian Munsuri y Hernaiz thereafter, through one Wenceslao Bosch thereunto duly empowered in writing to represent him (meaning the power of attorney aforesaid, R., 37), filed proof before the referee of a claim in his own favor against said bankrupt concern, amounting to over eleven thousand dollars. Section 5*c* of the bankruptcy act, in our opinion, gives the court this jurisdiction.
>
> "The court of bankruptcy which has jurisdiction of one of the parties, may have jurisdiction of all of the partners and of the administration of the partnership and individual property."

Pursuant to this opinion of October 25, 1907, an order was entered which adjudged and decreed that the said Julian Munsuri was a general partner in the bankrupt firm of Sucesores de Jose Hernaiz, and as such was liable for the debts of said firm, and further that the action of the referee of June 29, 1907, vacating his orders of May 14, 1907, be reversed (R., 27).

Promptly after the receipt of authority to do so from their client, resident in Spain, Messrs. Sweet, Rossy, and Campillo, under date of February 27, 1908, appearing specially for the purpose and for no other, filed a motion objecting to the jurisdiction of the court over the person or individual property of Julian Munsuri, and moved that all orders of sequestration and injunction aforesaid affecting him individually be vacated and set aside, and on the same day served a notice on opposing counsel of hearing thereon for a day specified (R., 30). This was, before hearing, supplemented by further motion, with exhibits showing the conditions hereinbefore set forth.

In an opinion rendered July 14, 1908 (R., 38-39) the court adhered to his former position and refused to rescind the orders of sequestration or revise his said *ex parte* decision and decree of October 25, 1907 (R., 27). In a subsequent opinion, on another phase of the case, rendered January 29, 1909 (R., 82-83), the court stated that "Munsuri has not had his day in court;" that "Munsuri believed himself to be a limited partner, and did not know that the law made him liable as a general partner," etc.

On February 19, 1909, Julian Munsuri, through his counsel, instituted appellate proceedings before this court for bringing in question the jurisdiction of the United States District Court for the District of Porto Rico over the person and individual property of said Julian Munsuri and seeking a review by this court of the action of the court below in declaring Julian Munsuri a general partner and in passing the aforesaid decrees of sequestration and injunction affect-

ing his individual property on the Island of Porto Rico. This petition was, on the same day, allowed by the court, and the appeal bond was also duly approved and assignments of errors were filed and citations issued and served (R., 145-146). The questions of jurisdiction were also stated in the certificate of the court (R., 146).

Assignments of Errors.

I.

That the matters set forth in the proceedings had in said matter do not give this court jurisdiction over the person or property of said Julian Munsuri, or authorize the subjection of the private property of said Julian Munsuri to the payment of the debts of said bankrupt firm.

II.

That the matters testimony tending to prove which was given before Andres Crosas, referee in bankruptcy, in the above entitled matter, do not give said court jurisdiction over the person or private property of said Julian Munsuri without his consent.

III.

That as the testimony adduced in said proceedings show that Julian Munsuri was not at any time personally subjected to the jurisdiction of said court, and also show that he did not consent to the jurisdiction of the same, the court erred in denying petitioner's motion to vacate the injunction restraining Munsuri from collecting his rents, and also erred in not vacating all other orders theretofore entered under which jurisdiction was exercised over the private property of Julian Munsuri.

IV.

The court erred in considering testimony presented in the Spanish language without having the same translated.

V.

The court erred in considering the testimony of Lloyd Lyons because of his lack of knowledge of the Spanish language or of Spanish methods of book-keeping, especially in the absence of said Munsuri, or the knowledge on the part of said Munsuri that said evidence was being taken to use against him personally, the said Munsuri not appearing to have been brought within the jurisdiction of said court or to have consented thereto.

VI.

The court erred in holding that said Julian Munsuri was a general and not a special partner.

VII.

The court erred in receiving as evidence the relation of Munsuri to said partnership letters or the alleged contents of letters written in the Spanish language and not translated.

VIII.

The court erred in reversing the order of the referee releasing said Julian Munsuri and his property from liability on account of the debts of said bankrupt firm.

IX.

The court erred in reversing the order of the referee in vacating the injunction order theretofore issued in said proceeding.

X.

The court erred in reversing the order of the referee releasing all of Julian Munsuri's private property.

XI.

The court erred in refusing to vacate and set aside its own order of October 25, 1907.

XII.

The court erred in attempting to subject Julian Munsuri or his private property to the jurisdiction of the court without notice or without the consent of said Munsuri.

ARGUMENT.

I.

Jurisdiction of this Court.

There is involved in this case the jurisdiction of the United States court for the district of Porto Rico to proceed without due process of law—

(*a*) To sequestrate the individual property of Julian Munsuri, a citizen and resident of Spain, from the hands of his agent in Porto Rico; (*b*) To proceed without due process or notice required by law, under *ex parte* proceedings, to declare Julian Munsuri a general partner of an insolvent firm, which, through its general and managing partner, filed a voluntary petition as a limited copartnership and was adjudicated a bankrupt as such, without process and before appearance of any kind by the said Julian Munsuri.

The relief sought at the hands of this court involves a consideration of questions of law only. It is conceded that the proceeding by which the case is sought to be presented to this court partakes of two separate, yet kindred, forms of procedure for appellate review of these errors of law; but it is contended that the same is susceptible of amendment, if need be, under the authority of this court contained in sections 1012 and 1005 of the Revised Statutes, so as to conform in form to either of the proceedings which this court may find to be appropriate.

(1) The petition (R., 84-85), approval of court (R., 85), assignment of errors, with prayer appended (R., 86-87), bond (R., 88), citation (R., 145-146), and certificate by the court (R., 146), are consistent with a certification of questions of jurisdiction by appeal under section 5 of the act of March 3, 1891 (26 Stats., 827).

(2) The same are likewise consistent with a petition to superintend and revise in matters of law, under section 24*b* of the bankruptcy act of July 1, 1898 (30 Stats., 553), should this court find that said section 24*b* applies to this court and that it has jurisdiction to consider such petition to superintend and revise under the bankruptcy act.

Generally speaking, the distinction between an appeal and a petition to review and revise is that the former may present questions both of law and of fact, while the latter is confined to the underlying questions of law involved in the matters presented.

It so happens, however, that both appeals and writs of error coming to this court from Porto Rico under the Foraker act are likewise confined to questions of law (sec. 35, act April 12, 1900, 3 Stats., 77, 85); also that certifications under section 5 of the act of March 3, 1891 (26 Stats., 826, 827), are confined to questions of jurisdiction of the court from which appeal is taken direct to this court; and therefore it is necessarily confined to questions of law.

Thus far in the execution of the bankruptcy law, the questions of practice, as between appeals and petitions to revise, have arisen principally, if not almost wholly, in the various circuit courts of appeals in respect to proceedings for review of courts of bankruptcy, directly subordinate in jurisdiction to the appropriate circuit court of appeals.

It has been held that where it is sought to combine the two remedies by uniting an appeal with a petition for review, the two do not neutralize each other, but the court will proceed to adjudicate on the controversy in the proper proceeding.

Fisher *vs.* Cushing (4 Abr., 646; 103 Fed., 860).

In re Worcester County (4 Abr., 496; 102 Fed., 808).

Lockman *vs.* Long (12 Abr., 497 132 Fed., 1).

So, also, it has been held that in proper cases an appeal may be treated as a petition to revise.

In re Whitaker (5 Abr., 198; 108 Fed., 180).

In re Blanchard Sleigh Co. (21 Abr., 142; 164 Fed., 311).

All of the above cases relate more particularly to bankruptcy cases.

With these preliminary statements, it is deemed proper to consider the question of the applicability of the laws relating to the two modes of procedure, under the one or the other of which it is contended that this case may be reviewed by this court:

(1) Certification under Section 5, Act of March 3, 1891.

Section 34 of the Foraker act (31st Stats., 77, 84), among other things, provides:

> "That Porto Rico shall constitute a judicial district to be called 'the District of Porto Rico' * * * District Court for said District shall be called the District Court of the United States for Porto Rico * * * and shall have power, in addition to the ordinary jurisdiction of District Courts of the United States, the jurisdiction of all cases cognizant in the Circuit Courts of the United States and shall proceed therein in the same manner as a Circuit Court. The laws of the United States relating to appeals, writs of error and certiorari, removal of cause, and other matters and proceedings as between the courts of the United States and the courts of the several States shall be governed in such matters and proceedings as between the District Court of the United States and the courts of Porto Rico. * * * All pleadings and proceedings in said court shall be conducted in the English language." * * *

Sections 5 and 10 of the act of March 3, 1891 (26 Stats., 826, 827), read as follows:

> "SEC. 5. That appeals or writs of error may be taken from the District Courts or from the existing Circuit Courts direct to the Supreme Court in the following cases:
>
> "In any case in which the jurisdiction of the court is in issue; in such cases the question of jurisdiction alone shall be certified to the Supreme Court from the court below for decision."
>
> * * * * * * *
>
> "SEC. 10. That whenever on appeal or writ of error or otherwise a case coming directly from the District Court or existing Circuit Court shall be reviewed and determined in the Supreme Court, the cause shall be remanded to the proper District Court or Circuit Court for further proceedings to be taken in pursuance of such determination."

As stated above, the questions involved in this case, *as presented*, are confined strictly to the matter of jurisdiction of the court below, upon a state of pleadings set forth in the statement of the case, in which, however, only a brief reference was made to the proceedings by which it was sought to secure a review by this court. This appellate proceeding was begun by petition of Julian Munsuri (R., 84-85), reciting:

> "that the cause in the record and proceedings, as also in the judgment or order of the said United States District Court for Porto Rico in above entitled proceedings, wherein was drawn in question the jurisdiction of said United States District Court of Porto Rico, over the person and property of Julian Munsuri in said bankruptcy proceeding, and the decision was in favor of the jurisdiction of said court; and wherein was drawn in question the relation of said Julian Munsuri to the above entitled bankruptcy firm, which decision was against said Munsuri; and wherein was drawn in question the right to subject the private property of said Munsuri to the payment

> of the debts of said bankrupt firm, which decision was against said Munsuri; wherein was drawn in question whether or not said Munsuri was a limited or a general partner of said bankrupt firm under the laws of Porto Rico, which issue was decided against said Julian Munsuri."

The petition then proceeds to aver that "a manifest error had happened to the great damage of said Julian Munsuri, as by said record appears, * * * wherefore the said Julian Munsuri petitions a review of the legal questions involved in said proceedings." This petition is verified and its allowance is approved by the court.

Then follows the assignments of error, as in this brief are hereinbefore set forth, the paper concluding with the following prayer:

> "Wherefore the said Julian Munsuri prays that the order or judgment of the said District Court of the United States for Porto Rico adjudging that it has jurisdiction over the person and private property of Julian Munsuri without notice to said Munsuri or his consenting to the jurisdiction of said court be reversed, and that the said District Court of the United States for the District of Porto Rico be ordered to enter an order directing the vacating of all orders or adjudications of whatsoever kind to the effect that said court has jurisdiction over the private property of said Munsuri and directing said court to enter an order releasing the same."

Then follows the bond, duly approved by the court (R., 88); also citation, with acknowledgment of service by counsel thereon (R., 145-146); the record then concludes with the certificate of the court (R., 146) to the effect:

First:

> "That the aforegoing transcript contains all of the record, inclusive of the testimony and exhibits presented to me *for the consideration of the question of the relation of Julian Munsuri to the firm of the Sucesores de Jose Hernaiz.*"

Second:

> "And I further certify that the said transcript is a complete record of all of the pleadings, papers, and documents of whatsoever character presented to me *for the consideration of a decision upon the question of the jurisdiction of this court to subject the private property of Julian Munsuri to the payment of the debts of the bankrupt firm of Sucesores de Jose Hernaiz.*"

It may be contended that this certificate does not conform, in form, to those ordinarily used by district and circuit courts in presenting questions of jurisdiction of such courts in cases brought up under section 5 of the act of March 3, 1891. Yet, it cannot be denied that the certificate, as well as the petition, substantially states the questions, and the record certified shows them.

In United States *vs.* Larkin, 208 U. S., 333, 338, this court, in an opinion by the Chief Justice Fuller, held that:

> "When the record shows that the only matter tried and decided in the court was one of jurisdiction, and the petition upon which the writ of error was allowed, asked only for a review of the judgment that the court had no jurisdiction of the action, the question of jurisdiction alone is sufficiently certified" (citing cases).

This case was followed in a subsequent case in which there was no certificate, as such.

The Steamship Jefferson (215 U. S., 130, 136).

It will be contended on the merits of this appeal, among other things: (*a*) That the court could acquire no jurisdiction even of the limited copartnership on *voluntary* petition; (*b*) That, even if this were otherwise, and Julian Munsuri was a general partner, in the absence of any averment as to insolvency of members of the firm, the court was without jurisdiction to proceed without consent; and,

(*c*) that, in no event, has jurisdiction been obtained over the person or individual property of Julian Munsuri.

Upon this theory the court has not proceeded, so far as Julian Munsuri individually is concerned, as a bankrupt court at all, and therefore the matter is one of general jurisdiction and may be brought upon appeal under section 5 of the act of March 3, 1891.

Bordes *vs.* Howarden Bank (178 U. S., 524).

(2) As a Petition to Superintend and Revise.

By section 24 of the Bankruptcy act (30th Stats., 553) Congress provided:

> "PAR. 24. Jurisdiction of Appellate Courts.—*a*. The Supreme Court of the United States, the circuit courts of appeals of the United States, and the supreme courts of the Territories, in vacation in chambers and during their respective terms, as now or as they may be hereafter held, are hereby invested with appellate jurisdiction of controversies arising in bankruptcy proceedings from the courts of bankruptcy from which they have appellate jurisdiction in other cases. The Supreme Court of the United States shall exercise a like jurisdiction from courts of bankruptcy not within any organized circuit of the United States and from the Supreme Court of the District of Columbia.
>
> "*b*. The several circuit courts of appeal shall have jurisdiction in equity, either interlocutory or final, to superintend and revise in matter of law the proceedings of the several inferior courts of bankruptcy within their jurisdiction. Such power shall be exercised on due notice and petition by any party aggrieved."

The United States Court for the District of Porto Rico has never been assigned as a subordinate tribunal to any circuit court of appeals, and it has been held by this court

that the act of Congress did not contemplate that it should be.

Royal Insurance Co. *vs.* Martin (192 U. S., 149, 160).

Thus far this court has not passed squarely upon the question as to whether or not it has jurisdiction to entertain a petition to superintend and revise, under section 24*b* of the bankruptcy act.

The only case in which the principle involved has been discussed, which counsel has been able to find, is a case rendered by the Circuit Court of Appeals for the Eighth Circuit.

In re Blair, 5 Ambr., 793; 103 Fed., 662.

This case involved a petition for revision of the proceedings in the United States Court for the Northern District of the Indian Territory, in bankruptcy, and was addressed to the United States Circuit Court of Appeals for the Eighth Circuit. That court, speaking through Caldwell, Justice, said:

> "The United States courts of original jurisdiction in the Indian Territory are undoubtedly inferior courts of bankruptcy, within the meaning of these words in subsection "*b*" (Sec. 24), but they are not within the jurisdiction, either territorial or appellate, of the United States Circuit Court of Appeals for the Eighth Circuit * * * The petition to revise proceedings in bankruptcy being, as we have shown, in its very nature an appellate proceeding, the provision of section 24, which invests the supreme courts of the Territories with appellate jurisdiction of controversies arising in bankruptcy proceedings from the courts of bankruptcy from which they have appellate jurisdiction in other cases,' is adequate to invest the Supreme Court of the Territories with the superintending and revisory jurisdiction spoken of in subdivision "*b*."

The language quoted by the court from section 24 is identical with that used in the statute as relating to the appellate jurisdiction of this court, and which in terms is made to apply to matters arising in "Courts of bankruptcy not within any organized circuit," and which includes the United States Court for the District of Porto Rico.

In the case of Plymouth Cordage Co. *vs.* Smith (194 U. S., 315) this court found that the district courts of Oklahoma Territory had been assigned to the Eighth Circuit, contrary to the hypothesis in the Blair case, and pointed out the order (139 U. S., 707), and held that said circuit court of appeals had exclusive jurisdiction in matters of review under section 24*b*, arising in the courts of subordinate jurisdictions. This court, speaking through Chief Justice Fuller, in this case said:

> "By the judiciary act of March 3, 1891, that jurisdiction embraced the review of the judgments, orders and decrees of the supreme courts of the Territories in cases in which the judgments of the circuit courts of appeals were made final by this act, but *in other cases the jurisdiction remained in this court.* Shute *vs.* Keyser (149 U. S., 649).
>
> "Then came the bankruptcy law, making the district courts of the Territories courts of bankruptcy, and providing that their proceedings might be revised by the circuit courts of appeals within whose jurisdiction they happened to be.
>
> "We think the law should be taken as it is written, and perceive no adequate reason for concluding that the real intention of Congress is not expressed in the language used. Congress may well have believed it wisest that the circuit courts of appeals should deal in this summary way with questions of law arising in the progress of bankruptcy proceedings in the territorial courts, although jurisdiction by appeal or writ of error, and by appeal, as provided, was vested in the supreme courts of the Territories.
>
> "The Circuit Court of Appeals for the Fifth Circuit *has announced the same conclusion* (*In re* Seebold, 105 Fed. Rep., 910, 914), as has the Supreme

> Court of Oklahoma (*Ex parte* Stumpff, 9 Oklahoma, 639). A different view appears to have been entertained by the Circuit Court of Appeals for the Eighth Circuit *In re* Blair, 106 Fed. Rep., 662, *though apparently the case did not necessarily require* the precise question to be passed on." (Italics supplied.)

It will be observed that this court has not stated what course it will pursue, by analogy or otherwise, in entertaining a petition to superintend and revise in matters at law coming up to it from a court in bankruptcy over which no other court than this court has jurisdiction to superintend and revise errors of law.

It will readily be seen by reference to the petition, assignment of errors, etc., hereinbefore referred to, that the procedings taken are in consonance with those required in matters of revision and superintendence on questions of law.

It may be contended that these proceedings are defective on the ground that they were not taken in time, about six months having elapsed between the last action of the court and the allowance of the petition. In this connection it is deemed only necessary to state the practice, as given in notes to the Revised Statutes, annotated, as follows:

> "No rule or order has been made by the Supreme Court regulating the practice under section 24*b*. Since the jurisdiction to superintend and revise is 'in equity,' the Federal equity rules established by the Supreme Court must be followed as nearly as may be. General Order No. 37. * * * *In re* Baker (C. C. A., 1900), 104 Federal, 287. The practice has been regulated by rule in the Circuit Court of Appeals for the First Circuit (34 C. C. A., 111), and for the Fourth Circuit (37 C. C. A., 111).
>
> "Time for filing by analogy to the statutory limitation of six months for appeals to the Circuit Court of Appeals *in ordinary litigation*, the same period has been adopted in one of the circuits as the limitation for petitions for revision. *In re* Worcester

County (C. C. A., 1900), 102 Fed. Rep., 812. * * *

"Bankrupt act of 1867 prescribed no period of limitation for revisory proceedings. In the matter of Alexander (1869) Chase (U. S., 295; 1 Fed., case No. 160), Chief Justice Chase said:

" 'Unreasonable delay in invoking the superintending jurisdiction should certainly not be allowed; nor, on the other hand, should excessive rigor be exercised that the ends of justice will probably be defeated.'

"In Troy First National Bank *vs.* Cooper (1873, 20th Wall. (U. S.), 177), Mr. Justice Story said:

" 'Undoubtedly the applications should be made within a reasonable time, in order that the proceedings to settle the bankrupt's estate may not be delayed, but neither the act of Congress nor any rule of this court determines what that time is. At present, therefore, it must be left to depend upon the circumstances of each case. Perhaps, generally, it should be fixed in analogy to the period designated within which appeals must be taken.' Citing Littlefield *vs.* Delaware, etc., Canal Co. (1871), 3 Cliff, U. S., 371, where the court said:

" 'Until some rule is adopted upon the subject, the court will not deprive the petitioner of a hearing on that ground (delay) unless the delay is manifestly unreasonable or has operated to the prejudice of the respondent.' "

Revised Statutes, annotated, volume 1, page 599.

The period of appeals to this court from the district of Porto Rico is two years. By reference to the record, it will readily be seen that the interests of the respondent have not suffered by reason of any delay in taking these proceedings, and that they were taken at the most logical time practicable in view of the state of the proceedings before the court below.

(3) Appeal under Foraker Act.

Should this court conclude that section 5 of the act of March 3, 1891 (26 Stats., 826, 827) is not applicable to the United States Court for the District of Porto Rico, and that it would have been appropriate for the case to be presented on appeal, as a case not arising in bankruptcy proper, then it is contended that it may be entertained as such appeal under section 34 of the Foraker act (31 Stats., 77, 85), which reads in part as follows:

> "SEC. 35. That writs of error and appeals from the final decisions of the Supreme Court of Porto Rico and the District Court of the United States shall be allowed and may be taken to the Supreme Court of the United States in the same manner and under the same regulations and in the same cases as from the supreme courts of the Territories of the United States; and such writs of error and appeal shall be allowed in all cases where the Constitution of the United States, or a treaty thereof, or an act of Congress is brought in question and the right claimed thereunder is denied."
> * * *

II.

Assignments II, IV, V and VII.

Assignments of error II, IV, V and VII are based largely upon the provisions of the Federal Statute (secs. 34 and 35 of the Foraker act) requiring all proceedings to be conducted in the English language; but, as the proceedings complained of were conducted practically *ex parte*, so far as Julian Munsuri was concerned, there was no method by which to subsequently make the record reveal the facts on which the assignments were based. These assignments will not, therefore, be argued in detail, but will be treated as incidents of the character of proceeding to which exceptions are taken in other assignments of error which are more clearly shown by the record.

Before passing to a discussion of these basic assignments special attention is called to assignment VII and to the fact that the court in his opinion (R., 28), based upon the *ex parte* hearing of October 25, 1907, used, in reaching his said decision and the decree based thereon, "letter books, papers, ledgers, etc.," all of which must have been in the Spanish language, and no translation of which were ever made and incorporated in the record.

III.

Jurisdiction of Court Below.

For the sake of convenience, the balance of the assignments of error, being I, III, VI, VIII, IX, X, XI, and XII, will be combined in argument to certain propositions, involving the same in substance in more convenient form for argument.

1. The court below did not and could not acquire jurisdiction of the cause upon the pleading presented in the form of *a voluntary* petition of *a limited* co-partnership in liquidation, on which, and without any amendment of pleading to conform to the law, the adjudication was made, because the same came within the definition of "corporations" under the last clause, section 1 (6) of the Bankruptcy act, and such "associations" could not proceed by petition, according to section 4*b* of said act.

2. That under no theory could the court have acquired jurisdiction of the individual property of said Julian Munsuri, certainly in the absence in fact and in averment of his insolvency individually, his consent to the proceedings and the issuance of process or notice.

3. That the court below, as a court of bankruptcy, had no jurisdiction over Julian Munsuri in respect to his individual property.

(1.)

Voluntary Petition Proceedings Void.

By reference to the voluntary petition in bankruptcy, filed on behalf of the firm by Jose Trueba (R., 17), it will be seen that in the introduction of the petition it is specified that Julian Munsuri is a *"limited partner,"* and the firm name, as signed to the petition, shows that it is a limited co-partnership, the signature being, "Sucs. de José Hernaiz, *L'd.*"

Notarial instruments (R., 13-17) and the finding of the referee (R., 23) show that the articles of co-partnership were duly recorded and that those articles show that the same was a *limited co-partnership.*

By section 1 of said act it is provided:

> "(6.) 'Corporations' shall include all bodies having any of the powers and privileges of private corporations not possessed by individuals or partnerships, and *shall include limited and other partnership associations organized under the laws making the capital subscribed alone responsible for the debts of the association;* * * * (19) 'persons' shall include * * * 'partnerships.'"

Paragraph 4 of the Bankruptcy Act provides:

> "*a.* Any person who owes debts, *except a corporation,* shall be entitled to the benefits of this act as a voluntary bankrupt."
>
> "*b.* Any natural person * * * and any corporation engaged principally in manufacturing, trading, printing, publishing, mining, or mercantile pursuits, owing debts to the amount of $1,000.00 or over, may be adjudged an *involuntary* bankrupt upon default for an impartial trial, and shall be subject to the provisions and entitled to the benefit of this act * * * the bankruptcy of a corporation shall not release its officers, directors, the stockholders, as such, from any liability under the laws of a State or Territory of the United States."

By section 48 of the Commercial Code it is provided that:

> "The liability of special partners for the obligations and losses of the copartnership shall be limited to the funds which they contributed or bound themselves to contribute to the limited copartnership," etc.

The word "corporation" as used throughout the statute includes in its meaning this class of limited copartnerships, and the definition contained in section 1 (6) was made for the purpose of effectuating this construction of the statute.

It makes no difference, therefore, what was done by the court below, the adjudication by *voluntary* petition was beyond the power and jurisdiction of the court to effect, and all of the proceedings under this voluntary petition by the court below are not merely voidable but void.

It is evident that the pleader, who filed the voluntary bankruptcy proceedings, overlooked the provisions of law, above quoted, by which the court was deprived of jurisdiction under *voluntary* petition to adjudicate a limited copartnership a bankrupt. Truebas and Bosch both testify that it was a limited copartnership; the notarial instruments show that it was, in form at least; the referee finds that it was a limited copartnership; the copartners themselves always proceeded on that theory, and the court, in its opinion of January 29, 1909, said that *"Munsuri believed himself to be a limited partner"* (R., 83).

The fact that counsel for the partnership was in error in the form of his proceeding and the court erred in entertaining the same, does not render the proceeding valid in law.

(2)

General Partnership Theory.

It is clear, both by the purpose and the form of the voluntary petition, that the initial proceedings in the court below were contrary to the theory that the partners individ-

ually, or either of them, or the individual property or liabilities of the members of the firm, or either of them, were sought to be administered in these bankruptcy proceedings.

The petition was filed on behalf of the copartnership and without any averment as to the *solvency* or *insolvency* of the members of the firm, or either of them, and *no schedule of personal assets or liabilities of the managing partner,* or of either of the partners, was submitted. The adjudication in bankruptcy was confined to the copartnership as an independent legal entity, and to the copartnership alone. The managing partner, who filed the petition on behalf of the firm, was not adjudged a bankrupt. No consent was obtained from Julian Munsuri, a *solvent* partner, as would be required by paragraph 5*h*, if a contrary theory should apply to the proceedings, even assuming him to have been a general partner, which is denied. Nor was there any compliance with General Order VIII or paragraph 18 "*a*" and "*c*" to bring Julian Munsuri into the proceedings and give him his day in court.

The only theory on which the validity of the adjudication and authority of the trustee for the partnership and court to proceed with the administration of the assets of the firm at all is that the affairs of the copartnership, *as a separate legal entity,* are alone involved. This theory can best be presented by quoting from the leading case on the subject.

In re Bartenshaw, 157 Fed., 363.

In this case the court (syllabus) held that:

> "The court of bankruptcy was without jurisdiction to summarily take and administer in the proceedings *against the partnership* the individual estate of the solvent partner without his consent."

In this case a general partnership "made an assignment for the benefit of creditors," and "upon that ground alone"

the court "adjudged that said B. F. Masterman, C. C. Surber, and Charles Joyce, partners doing business as the Opera House Drug Company, be adjudged bankrupts," and added:

> "'It is further ordered that this adjudication binds only the partnership entity and not the partners as individuals.' None of the partners were found to be insolvent or adjudged to be bankrupt. The trustee chosen by the creditors of the partnership collected the partnership property, converted it into money, and paid the expenses of the proceedings. He then had remaining $213.35 to be distributed among the creditors and the indebtedness of the partnership to them was $4,180.66. Thereupon he filed a petition in the court below for an order upon C. C. Surber, one of the partners, that he should turn over to him certain real estate which did not belong to the partnership and which he owned individually, to be applied to the payment of these debts. Surber answered that his real estate was his individual property, that he had not been and was not insolvent, and that he had not been adjudged a bankrupt. The referee found the facts to be as Surber alleged, and denied the prayer of the petition, on the ground that the real estate of an unadjudicated solvent partner was not subject to administration in bankruptcy upon a simple adjudication of the partnership and the court upon a proper certificate affirmed this ruling."

The matter came up before the Circuit Court of Appeals for the Eighth Circuit, under section 24*b* of the bankruptcy act. Judge Sanborn, in delivering the opinion of the court, rendered a very able opinion sustaining the doctrine of the proposition under discussion, which is quoted from the syllabus in this case. After quoting from the case of Walker *vs.* Wait, 50th Vermont, 668, 676, Robertson *vs.* Corset, 39th Michigan, 784, and the words of Mr. Justice Brewer in the case of Cross *vs.* National Bank, 17th Kan., 340, the court said:

> "Thus it may seem that the conception of a partnership as a distinct entity, separate in estate and

obligations from each of the partners and from the individual estates and obligations of each partner, was an established and approved legal conception years before the act of 1898 was passed. Congress embodied this conception of a partnership in the bankruptcy law of 1898 by these clear provisions."

The court then quotes section 1 (19), quoted above, from the bankruptcy act, and quotes from section 5 of that law as follows:

"*a.* A partnership, during the continuation of partnership business, or after its dissolution and before the final settlements thereof, may be adjudged a bankrupt.

"*b.* The creditors of the partnership shall appoint the trustee; in other respects so far as possible the estate shall be administered as herein provided for other estates.

"*c.* The court of bankruptcy which has jurisdiction of one of the partners may have jurisdiction of all the partners and of the administration of the partnership and individual property.

"*d.* The trustee shall keep separate accounts of the partnership property and of the property belonging to the individual partners.

"*e.* The expenses shall be paid from the partnership property and the individual property in such proportions as the court shall determine.

"*f.* The net proceeds of the partnership property shall be appropriated to the payment of the partnership debts, and the net proceeds of the individual estate of each partner to the payment of his individual debts. Should any surplus remain of the property of any partner after paying his individual debts, such surplus shall be added to the partnership assets and be applied to the payment of the partnership debts. Should any surplus of the partnership property remain after paying the partnership debts, such surplus shall be added to the assets of the individual partners in the proportion of their respective interests in the partnership.

"*g.* The court may permit the proof of the claim

of the partnership estate against the individual estates, and *vice versa*, and may marshal the assets of the partnership estate and individual estates so as to prevent preferences and secure the equitable distribution of the property of the several estates.

"*h*. In the event of one or more but not all of the members of a partnership being adjudged bankrupt, the partnership property shall not be administered in bankruptcy, unless by consent of the partner or partners not adjudged bankrupt; but such partner or partners not adjudged bankrupt shall settle the partnership business as expeditiously as its nature will permit, and account for the interest of the partner or partners adjudged bankrupt."

Proceeding, the court says:

"No express provision can be found in this legislation and no indication or implication is perceived in it that an adjudication of a partnership draws into the administration of its estate in the court of bankruptcy the property of the solvent partners who are not adjudged bankrupts. On the other hand, every provision of it is consistent with the retention and administration of their individual property by the unadjudicated partners, and many of them are utterly inconsistent with the administration of these individual estates by the bankruptcy court. Clause '*c*' provides that the court of bankruptcy which has jurisdiction of one of the partners may have jurisdiction of all of the partners and of the administration of the partnership and individual property. *The unavoidable inference is that the court of bankruptcy, which does not have jurisdiction of any of the partners, cannot have jurisdiction of all of the partners and of the administration of both the partnership and the individual property.* Nor is the reason for this provision difficult to perceive. Section 5 treats exclusively of bankrupt partnerships and their members. It does not deal with solvent partnerships that have committed no act of bankruptcy, nor does it subject partnerships to adjudication in bankruptcy solely because some of their members have been adjudged bankrupts. A member of a partnership may

be adjudged bankrupt when the partnership cannot be, and in such a case the bankruptcy court has no jurisdiction of the partnership property. But where one of the partners is adjudged bankrupt and the court thus acquires jurisdiction of him, the partnership is dissolved, and, if the partnership also is adjudged bankrupt, the bankruptcy court is given jurisdiction by clause *'c'* of the partnership and of all its members, because it then becomes necessary to marshall the properties and the liabilities of the partnership and its members, and to distribute the proceeds of the properties among the creditors in accordance with the equitable rule recited in clause *'f'*. *The provision of clause 'c' simply gives to a court of bankruptcy which has jurisdiction of one of the members of a partnership adjudged bankrupt the same jurisdiction to administer the estate of the partnership and of its members which a court of equity would have in similar circumstances.* A court of equity in such circumstances would not take the partnership property from the solvent partners, and clause *'h'* imposes upon the bankruptcy court this salutary rule of the equity practice. It provides that the property of the partnership and its administration shall not be taken from the unadjudicated partners by reason of the insolvency or bankruptcy of their fellows and of the partnership. It declares that although the partnership and one or more, but not all, of the members of it, are adjudged bankrupts, and the court thus has jurisdiction of them, nevertheless 'the partnership property shall not be administered in bankruptcy unless by consent of the partner or partners not adjudged bankrupt.'

"If the property of a bankrupt partnership cannot be administered by a court of bankruptcy without the consent of the solvent partner who has not been adjudged bankrupt, *a fortiori*, the latter's individual property cannot be. A court which cannot administer the property of a partnership adjudicated a bankrupt cannot by virtue of its jurisdiction over this partnership property, which it may not administer or touch, draw to itself and administer the individual property of the solvent partner without whose consent it may not administer the partnership property.

"Hence, when clauses '*c*' and '*h*' are read and construed together, they provide, in effect, that when a partnership and one or more of the partners, but not all of them, are adjudged bankrupt, those who are not so adjudged may administer the partnership property and *a fortiori* their individual property, and the court may not do so without their consent, but, if the unadjudicated members consent, the court may administer the partnership property and their individual estates. These provisions thus interpreted are fair, just, and reasonable. The solvent partner cannot in any event escape payment of the debts of the partnership. His individual property is subject to attachment, execution, and to all the ordinary processes of the law to satisfy them. He is more competent to manage the individual property and the property of his firm which he had the shrewdness and ability to accumulate, more competent to convert them into money and to apply them upon his obligations, than any trustee. He knows the property, its value, its availability for various uses, its market. He has a vital interest in securing the best price for it, and the fact that it is his property, that it is to be applied to his debts, gives him a preferential equity to apply it speedily and efficiently to the payment of his obligations. * * *

"A partnership is a 'person.' Section 1 (19). 'A person,' a partnership, is insolvent when the aggregate of its property is insufficient at a fair valuation to pay its debts. (Section 115.) A partnership owns its own property, and owns its own debts. It, its property, and its debts are separate and distinct from the individuals who compose it, from their individual property and from their individual debts. The partnership does not own, cannot assign, or apply to the partnership debts, the individual property of its members, nor is it liable for their debts. The most that a creditor of a partner can secure from a partnership or from its property is the excess of the latter after the partnership debts have been paid. The partners and their individual property are to a limited extent, to the extent of the excess of their individual property over their individual debts, but not

to the full extent of ordinary indorsers or indemnitors, sureties for the debts of the partnership. The act of 1898 recognized these patent facts, and provided for separate adjudications of the partnership and of its members. Under this act the partnership may make an assignment or commit some other act of bankruptcy and be adjudged a bankrupt while many of its members are solvent and cannot be so adjudged. On the other hand, some of its members may be adjudged bankrupt while the partnership is not subject to such an adjudication.

"Where a partnership is adjudged bankrupt and the members of the partnership are not, the trustee takes title to the partnership property and to that only, and his full duty is discharged and all the power which he has is exercised when he collects and converts the partnership property into money and distributes its proceeds among the creditors. The creditors of the partnership may subject the individual property of the unadjudicated partners to the payment of their debts, before, during or after the bankruptcy proceedings, *by actions at law, by suits in equity, or by other proceedings*, just as they may the property of endorsers upon the commercial paper of the firm or the property of sureties for its obligation. But the trustee of the estate of the partnership is neither the assignee nor the trustee of the claims of its creditors, nor their attorney nor agent to collect their claim out of the individual property of the unadjudicated partners, and he has no more right or authority at law or in equity to seize their individual property and to apply it to the payment of the partnership creditors than he has to take the property of endorsers of the firm paper or the property of sureties for its obligations and apply such property to their purpose. He is merely trustee of the property of the partnership, not of the individual property of the partners, nor of the property of any other debtors of the creditors of the partnership, and he is without power to take or to administer such property. Nor may he maintain any action or proceeding to enforce the liability of the individual partners to the partnership creditors, because he is not the assignee

> of the claims of the creditors of the partnership and he has no more right or authority than a stranger to enforce these claims against other persons than the bankrupt partnership or against other property than the property of the partnership.
>
> "Moreover, since the property of the unadjudicated partners does not vest in and may not be administered by the trustee of the bankrupt partnership, the discharge of the partnership discharges that entity only from its debts, and leaves the partners still subject to their liability to pay the unpaid balance of the claims of the partnership creditors. The reason of the case and the plain provisions of the bankruptcy law alike forbid the court of bankruptcy to draw to itself and administer the individual property of unadjudicated partners upon a mere adjudication of the bankruptcy of their partnership."

The court then proceeds to discuss authorities, to point out the fact that the act of 1898 materially differs from that of 1867 on the subject of partnership, and says:

> "The decisions to the effect that the bankruptcy of a partnership do not necessarily draw to the court of bankruptcy the administration of the individual estates of the partners (*In re* Stein & Co., 11 Am. Bnkr. Rep., 536, 539; 127 Sed., 547; 66 C. C. A., 272; *In re* Duguid, 3 Am. Bankr. Rep., 794, 799; 100 Fed., 274; Strause *vs.* Hooper (D. C.), 105 Fed., 590, 592; *In re* Blair (D. D.), 99 Fed., 76, 79) accord with this position, and the conclusion is that a court of bankruptcy upon an adjudication of a partnership bankrupt may not draw to itself and administer without his consent the individual estate of a solvent partner who has not been adjudicated a bankrupt."

This case differed from the case at bar in that it was clearly a general copartnership. There was an act of bankruptcy of the firm occurring within four months of the filing of the petition, the copartnership had been in business within six

months, all of the members of the firm resided within the jurisdiction of the court, and the individual partner affected was served with the proper process in connection with the act of sequestration, and was given an opportunity to defend his rights, which was not done in the case of Munsuri.

The court below contends that it acquired jurisdiction under section 5 *"c"* of the bankruptcy law and by reason of the submission by a Spanish lawyer of a claim of Munsuri, as a creditor, under a *special* power of attorney executed by Munsuri in Spain long prior to the proceeding and when the matter was pending in the insular courts and without any idea of authorizing consent being given to the administration of his individual property affairs in Porto Rico, and thus without pleading or notice as required by the general orders and rules of this court, as well as the bankruptcy law itself. See General Order VIII, section 18 *"a"* and *"c,"* and General Order XXXVII.

In addition to the reasons given in the case just quoted at length, paragraph 5 *"c"* does not apply to the case at bar because: (1) The underlying principles do not apply to *an expired contract of copartnership;* (2) nor to a *limited copartnership;* (3) the court did not have jurisdiction of the managing partner in his *individual* capacity; (4) the partnership alone submitted itself to the jurisdiction of the court; (5) and the provisions of law essential to obtain personal jurisdiction of the partners, or either of them, were not resorted to or complied with.

(3.)

Lack Jurisdiction Over Individual Property.

Under any view of the pleadings, the copartnership alone is in court, subject to adjudication, and Julian Munsuri, so far as his individual property is concerned, was not subject to the jurisdiction of the bankruptcy court.

In re Bortenshaw, 157 Fed., 363.

Hewett *vs.* Berlin Machine Works, 194 U. S., 300.

39

As to the effect of such appearance as may be involved in the proof of the claim, that at most could give jurisdiction of the person so far as bankruptcy proceedings proper were concerned.

Collier, 1910 Ed., p. 348.

> "Where objection is made to the jurisdiction of the court before proceeding to a hearing on the merits, and where before a final decision specific objection is made to the jurisdiction of the court, the appearance is not voluntary and is not sufficient to constitute a consent."
>
> Collier, 1910 Ed., 404, citing
> Louisville Trust Co. *vs.* Corningor, 184 U. S., 18.
> First Nat. Bk. Chicago *vs.* C. T. & T. Co., 198 U. S., 280.

Being a subject of the King of Spain and residing outside of the jurisdiction of the court it could not have general jurisdiction of a proceeding against Julian Munsuri affecting his individual property without his consent.

Toland *vs.* Sprague, 12 Peters, 300.
Bordes *vs.* Hawarden Bank, 178 U. S., 524.

To permit the court below to exercise jurisdiction over the individual property and force him, a solvent citizen of a foreign country, to settle all of his individual affairs in the Island of Porto Rico upon a basis of adjudication reached without pleading or process would be a parody on justice.

WILLIS SWEET,
GEORGE H. LAMAR,
Solicitors for Julian Munsuri.

Office Supreme Court U. S.
FILED
OCT 27 1911
JAMES H. McKENNEY,
Clerk.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1911.

No. 21.

JULIAN MUNSURI, PLAINTIFF IN ERROR,

vs.

J. H. FRICKER, TRUSTEE IN BANKRUPTCY.

BRIEF FOR DEFENDANT.

WM. H. HAWKINS.
WM. G. JOHNSON.
Counsel for Defendant.

THE LAW REPORTER PRINTING COMPANY, WASHINGTON, D. C.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1911.

No. 21.

JULIAN MUNSURI, PLAINTIFF IN ERROR,

vs.

J. H. FRICKER, TRUSTEE IN BANKRUPTCY.

BRIEF FOR DEFENDANT.

The transcript of record in this case is brought to this court, under the above title, by virtue of a document entitled "Petition for a Writ of Review to the United States District Court for Porto Rico," which begins with a petition in the name of Munsuri, setting out certain alleged erroneous rulings by the court, and concludes in the *form of a writ of error* (Rec., p. 84).

The purpose of the proceeding appears to be to review an order or decree of the court below in a bankruptcy proceeding adjudging Munsuri to be a general partner in his firm and as such liable for the debts (Rec., p. 27).

The transcript of record contains no allowance of or prayer for an appeal, and no writ of error, unless the document described as "Petition for Writ of Review to the United States District Court for Porto Rico" (Rec., p. 84) may be construed to be one.

The transcript of record contains no bill of exceptions, no findings of fact, and no conclusions of law.

The certificate of the clerk to the transcript of record (Rec., p. 143) discloses that it is not the entire record in any cause, but that it is a transcript of parts of records in two distinct and independent proceedings in bankruptcy, one of which appears to have been finally disposed of by an order of dismissal March 28, 1904 (Rec., pp. 61–2).

The transcript of record also shows that the order or decree complained of was passed October 25, 1907 (Rec., p. 27); that the said described "petition for writ of review," etc., was not issued within thirty days from said date, nor until February 19, 1909.

It is respectfully submitted that the said supposed writ and citation thereon, and the docketing of the said transcript, are insufficient in law under any statute, or rule or the practice of the court, to bring within the appellate jurisdiction of this court, for its consideration or action, any of the matters and things in the said transcript contained.

Counsel further respectfully suggest that as there is neither an appeal nor writ of error herein to be dismissed, that the said transcript of record should be ordered stricken from the files.

Respectfully submitted.

WM. H. HAWKINS.
WM. G. JOHNSON.